

Tuesday, May 16.

SECOND DIVISION.

MILNE'S EXECUTORS v. THE UNIVERSITY OF ABERDEEN AND OTHERS.

*Succession—Will—Bequest—Uncertainty—Bequest of Residue “to the Bursary Fund of Aberdeen University to Help in the Education of Poor and Struggling Youths of Merit”—Administration.*

A testator died leaving a will by which he bequeathed the residue of his estate “to the Bursary Fund of Aberdeen University to help in the education of poor and struggling youths of merit.” Held (1) that the bequest of residue was valid, and (2) that the University Court of the University of Aberdeen were entitled to receive and discharge the balance of residue on condition that a scheme for its administration as a bursary fund was submitted by them to and approved by the Court.

Alexander Milne, residing in Aberdeen, died on 8th March 1903 leaving a will dated 19th April 1898 and recorded in the Sheriff Court Books of the county of Aberdeen 30th March 1903, by which he nominated Arthur Odling, London, and John Duncan Nimmo, of Calcutta, as his executors, and after providing for payment of his debts, deathbed, and funeral expenses, together with various legacies, dealt with the residue of his estate as follows:—“And should any balance remain over from my estate after satisfying all the above claims, then I devote such balance of residue to the Bursary Fund of the Aberdeen University to help in the education of poor and struggling youths of merit.” The executors nominated accepted office, and after all payments of debts, legacies, &c., had been made from the testator's estate a residue of £9000 or thereby remained in their hands to be dealt with.

In the University of Aberdeen the various bursary endowments are not merged in one general bursary fund, but each individual endowment is kept separate, the revenue being devoted to the special purpose for which the bursary was founded. These bursaries differ from one another in regard to their objects, value, conditions of tenure, &c. Certain powers of administration were conferred on the University Court of the said University by section 6 of the Universities (Scotland) Act 1889, which is in the following terms:—“The University Court, in addition to the powers conferred upon it by the Universities (Scotland) Act 1858 shall, subject to any ordinances made by the commissioners, have power—(1) to administer and manage the whole revenue and property of the University and the college or colleges thereof existing at the passing of this Act, including the share appropriated to such University out of the annual grant hereinafter mentioned, and also including funds mortified for bursaries

and other purposes, and to appoint factors or collectors to grant leases, to draw rents, and generally to have all the powers necessary for the management and administration of the said revenue and property.”

Questions having arisen as to the application of the residue between the parties interested, this special case was presented. The parties to the special case were—(1) the testator's executors; (2) the University Court of Aberdeen University; (3) the heirs *in mobilibus* of the testator. The first parties maintained that the bequest was a valid one; that they were bound to administer it under a scheme to be approved by the Court; and that the second parties were not entitled to receive and discharge the bequest. The second party maintained that they were entitled to receive the bequest to be administered so as best to give effect to the testator's wishes. The third parties maintained that the bequest of residue was null and void on the ground of uncertainty, and in respect that it referred to a bursary fund which did not exist. They accordingly claimed that the residue became intestate succession and fell to them as heirs *in mobilibus* of the testator.

The following questions were submitted for the opinion and judgment of the Court:—“1. Is the bequest of such balance of residue to the Bursary Fund of the Aberdeen University valid? 2. (1) Are the second parties entitled to receive and discharge the same? or (2) Does it fall to be administered by the first parties under a scheme to be approved by the Court? or 3. Is said bequest invalid through vagueness and uncertainty, and does the balance fall to be paid to the testator's heirs *in mobilibus*?”

Argued for the first party—The testator's intention to help poor youths of merit in their education by means of bursaries was clear, but the use of the word “devote” made strongly against the view that a bequest to the University was intended, and the University Court could not grant a valid discharge. The first parties having as executors-nominate all the powers of trustees were in a position to administer the trust in accordance with the testator's intention.

Argued for the second parties—The testator's intention was clear; he had made no provision for a continuing trust, but had satisfied every requisite of law to constitute a valid bequest of residue in their favour. The fund fell to be administered by the University Court along with the other bursary funds of the University—*Crichton v. Grierson*, July 25, 1823, 3 W. & S. 329, *per* the Lord Chancellor at p. 338. The clearness of expression of the testator's intention distinguished the present case from those of *Blair v. Duncan*, December 17, 1901, 4 F. (H.L.) 1, *sub nom.* *Young's Trustees v. Young's Trustee*, 39 S.L.R. 212, and *Macintyre and Others v. Grimond's Trustees*, March 6, 1905, 42 S.L.R. 466. This bequest was for charit-

able purposes, and so entitled to special favour. If necessary a scheme could be submitted for the approval of the Court to carry out the testator's intention—*Magistrates of Dundee v. Morris*, March 25, 1885, 3 Macph. App. Cas. 134.

Argued for the third parties—Neither the subject nor the object of the bequest was sufficiently definite. It referred to a non-existent bursary fund. The bequest might have been good had it been for charitable purposes, but its purpose did not fall within that category—*Baird's Trustees v. Lord Advocate*, June 1, 1858, 15 R. 682, opinion of Lord Shand, 25 S.L.R. 533; *Commissioners of Income Tax v. Pemsel*, July 20, 1891, L.R. (H.L.) App. Cas. 531. The bequest was bad owing to its uncertainty, as the testator had given no definite directions how the money was to be applied in carrying out his wishes—*Grant and Others (Low's Executors) v. Macdonald and Others*, June 21, 1873, 11 Macph. 744, 10 S.L.R. 505. The Court would not interpose machinery to make a bad bequest such as this was good—*Davidson (Robbie's Factor) v. Macrae and Others*, February 4, 1893, 20 R. 358, 30 S.L.R. 411. The residue accordingly fell into intestacy.

LORD JUSTICE-CLERK—When one looks at this clause in this will I think it is quite clear that it was the intention of the testator to dispose of the residue and to devote it to a certain object. That object was the bursary fund of the University of Aberdeen. That is not ambiguous in any way. It does not matter whether there was a bursary fund in existence or whether this was to be the bursary fund. The testator intends that the money is to go to provide bursaries. His purpose was to help in the education of poor and struggling youths of merit in the University. This implies selection. Merit implies selection. But surely there can be no difficulty about that in the University.

I have therefore no hesitation in holding (1) that this is a good bequest for a well-defined purpose—it does not matter whether it is a charitable purpose or not; and (2) that the money should be handed over to the University Court. The only question is as to the scheme under which the fund is to be held. The Court will give its aid in that matter.

LORD KYLLACHY—I agree. The University of Aberdeen is a great educational corporation and has a statutory constitution, according to which it is one of the duties of the University Court to administer such portions of the University funds as are devoted to bursaries. The University has such funds, or, if it has not now, it may have them at any time; and the testator here seems to have assumed that it would possess, for purposes of administration, a "bursary fund" to which such funds should belong, and by means of which they could be kept separate from other funds. Accordingly he makes this bequest, expressing it simply as a bequest "to the bursary fund of the University of Aberdeen." I am, I

confess, unable to see any particular difficulty either as to the construction of such a bequest or as to its efficacy. It is, as I read it, simply a bequest to the University of Aberdeen upon trust for the purpose that, either by itself or in conjunction with other funds, it should be applied by the governing body of the University to a quite definite and known object, viz., the providing of bursaries to aid in the education at the University of a certain class of students. I know no ground for impeaching such a bequest as void from uncertainty. Neither do I see any sufficient reason for requiring the executors of the deceased to undertake the administration. The executors will, I think, be safe and be doing their duty in paying over the money to the University Court, whose receipt will, so far as I see, be a quite sufficient discharge. It is another matter whether we should not appoint the University Court to submit a scheme for our approval in the first instance. On that matter I am inclined to agree that that should be done.

LORD KINCAIRNEY—I am of the same opinion. I think this bequest is the same as a bequest to Aberdeen University for the purpose of forming a bursary fund. And I also hold that this bequest is protected from invalidity by being for charitable purposes. I think it should go to the University to be administered under a scheme to be settled by the Court.

The Court pronounced the following interlocutor:—

"Answer the first question therein stated in the affirmative, and the second question by declaring that the second parties are entitled to receive and discharge the balance of residue on condition that a scheme for the administration of the same as a bursary fund is submitted by them to and approved by the Court: Find and declare accordingly, and decern: Find the whole parties to the special case entitled to their expenses," &c.

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