COURT OF SESSION.

Friday, February 6.

SECOND DIVISION.

(SINGLE BILLS.)

LEA AND OTHERS, PETITIONERS.

Insurance—Insurance Company—Transfer of Business—Application to Court—Procedure—Publication of Notice of Intention to Make Application—Assurance Companies Act 1909 (9 *Edw. VII, cap.* 49), *sec.* 13.

The Assurance Companies Act 1909, section 13, provides that before any application is presented to the Court for its sanction to the transfer of the business of one assurance company to another, "notice of the intention to make the application shall be published in the *Gazette*."

In a petition for the sanction of the Court to an arrangement between two assurance companies for the transfer of the business of the one company to the other, the Court, following the English and Irish practice, *allowed* notice of the presentation of the petition to be inserted in the *Edinburgh Gazette* concurrently with the intimation of the petition on the walls and in the minute book, and ordered answers within eighteen days after such intimation and notice.

The Assurance Companies Act 1909 (9 Edw. VII, cap. 49) provides—Section 13—"(1) Where it is intended . . . to transfer the assurance business of any class from one assurance company to another company, the directors of any one or more of such companies may apply to the Court by petition to sanction the proposed arrangement. (2) The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established. (3) Before any such application is made to the Court—(*a*) Notice of the intention to make the application shall be published in the *Gazette*. (*b*) A statement of the nature . . . of the transfer . . . together with an abstract containing [certain particulars] shall, unless the Court otherwise directs, be transmitted to each policy-holder of each company [in certain specified manner]: Provided that it shall not be necessary to transmit such statement and other documents to policy-holders other than life, endowment, sinking fund, or bond investment policy-holders, nor in the case of a transfer to such policy-holders if the business transferred is not life assurance business or bond investment business. And (*c*) The agreement or deed under which the . . . transfer is effected shall be open for the inspection of the policy-holders and shareholders at the offices of the companies for a period of fifteen days after the publication of the notice in the *Gazette*."

Sir Thomas Sidney Lea, Bart., and others, directors of the United Sickness and Accident General Insurance Company, Limited, incorporated under the Companies Acts 1862 to 1900, and having its registered office at 42 Melville Street, Edinburgh, *petitioners*, with the consent and concurrence of their company and of the United General Commercial Insurance Corporation, Limited, incorporated under the Companies Acts 1908 to 1917, and having its registered office at 37 Old Jewry, London, presented a petition to the Court under the Assurance Companies Act 1909, section 13, to sanction the transfer by the former company of its business to the latter company.

The *petition*, after setting forth the powers of the two companies as to the transfer and acquisition of the business, stated that by an agreement in writing between the respective parties, dated 11th December 1919, the company agreed to sell and transfer to the corporation, and the corporation agreed to purchase and accept the transfer of, the undertaking, property, and assets of the vendor company, including the benefit of all contracts in connection therewith as on 1st December 1919, and all book debts owing to the vendor company as on that date, and the benefit of the securities for the same, and all cash in hand or at the bank, subject to the terms and conditions and for the consideration stated in the agreement, and that the agreement in question had been approved by a special resolution of the company duly passed and confirmed.

The petition further set forth—"The present arrangement is one for a transfer of assurance business. The assurance business proposed to be transferred from the company is not life assurance business or bond investment business. Accordingly no transmission of any statement and abstract or particulars to any policyholders is required.

"Both the transferring and the undertaking limited companies are consenters to this application. Conform to the practice in these matters the petitioners have prepared, and will insert in the *Edinburgh Gazette* immediately upon the issue of the first order hereon, a notice of the intention to make application to the Court for sanction as aforesaid. The agreement will thereafter lie open to policy-holders and shareholders for fifteen days at the offices of the company and of the corporation as specified in said notice, and it is proposed that the date for lodging answers hereto should be fixed by your Lordships after the expiry of said fifteen days."

The petitioners *craved* the Court, *inter alia*, "to appoint this petition to be intimated on the walls and in the minute book in common form, and to ordain answers, if any, to be lodged within eighteen days of such intimation," and thereafter to approve of the agreement and to sanction the arrangement by way of transfer proposed.

At the calling of the petition in Single Bills counsel for the petitioners stated that the practice of the courts, both in England and Ireland, in relation to such transfers

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-