

pay compensation under the Act to the workman. After a period, during which the employers paid to the workman 9s. 3d. per week, being the amount of his antecedent weekly wage, the workman obtained employment from them during a number of years, and apparently accepted it as covering any claim he might have for the time being in respect of his partial incapacity. Ultimately circumstances arose in which the workman fell back on the agreement, and he presented an application for review in which the arbitrator has assessed at 5s. the weekly amount of compensation in respect of partial incapacity to be paid to him until further orders of Court. The objection stated by Mr Hunter for the appellants was that the application for review was incompetent in respect that when it was presented there was no "existing" weekly payment to review. Paragraph (16) of Schedule I of the Act, it was said, applies only to existing weekly payments. I am unable to follow this line of argument in its application to the present case. Paragraph (16) cannot be displaced merely because the employer has ceased to pay compensation for some period before the application for review is presented. And there is no special prescription for claims under the Workmen's Compensation Act. The appellants founded on *Nicholson v. Piper* ([1907] A.C. 215), and in particular on the opinion of Lord Robertson. But there the arbitrator had pronounced an order which was held to make a final ending of the previous weekly payment, so that it was quite true to say in a legal sense that there was no longer any existing weekly payment to review. Here there is no corresponding state of facts. The weekly payment under the agreement had been *de facto* in abeyance for a number of years owing to the workman having taken employment in substitution, but it had never been put out of existence legally. I am unable to accept the Solicitor-General's contention that we should now hold on the facts of the case that the agreement had been discharged by mutual consent—a view which was not presented to the arbitrator and on which he has accordingly made no finding. I concur with your Lordship in holding that the application was competent, and that the question in the Stated Case should accordingly be answered as your Lordship proposes.

LORD SANDS—Under paragraph (16) of the First Schedule to the Act of 1906 any weekly payment may be reviewed. I accept the Solicitor-General's representation that a weekly payment falling to be reviewed must be a weekly payment under a living agreement. Now it is obvious in this case that the real question between the parties—the only question of any real interest to them—is whether when this application was made there was a living agreement. The appellants object to the review of the agreement by the arbitrator, but if there were a living agreement it would be in the interest of the appellants that it should be in the power of the arbitrator to review it seeing that the arbitrator

has fixed the amount at 5s., whereas if it is a living agreement and he cannot review it the amount is 9s. 3d. But the question which is before the Court, it seems to me, is whether we have any materials before us, or whether we are placed in a position, to judge in any way whether or not there was here, when the application was made, a living agreement. I can quite conceive of circumstances where it might be held that an agreement such as this had come to an end, or was no longer a living agreement, even although the man might still have a claim in respect of his injury. I figure the case, for example, of a man who is temporarily totally disabled and gets a sum fixed on that basis for a few weeks. He then recovers completely except that he wants a finger, and being reinstated in employment he claims nothing for a number of years. I think in these circumstances it might reasonably be held that the man, whether or not he had abandoned all claim to compensation, had abandoned the agreement for compensation at a certain rate. We have nothing of that kind presented to us here in the case as stated, and therefore I concur in the proposed answer to the question.

The LORD PRESIDENT did not hear the case.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—The Solicitor-General (D. P. Fleming, K.C.)—Hunter. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent—Moncrieff, K.C.—Patrick. Agents—Macpherson & Mackay, W.S.

Saturday, December 9.

## SECOND DIVISION.

### TRUSTEES OF CHALMERS' HOSPITAL, BANFF, PETITIONERS.

*Trust—Administration—Special Powers—Nobile Officium—Petition for Authority to Sell Heritage—Sale of Heritage Expressly Forbidden by Trust Deed—Sale "Expedient for the Execution of the Trust"—Trusts (Scotland) Act 1921 (11 and 12 Geo. V, cap. 58), sec. 5.*

The Trusts (Scotland) Act 1921, section 5, enacts—"It shall be competent to the Court, on the petition of the trustees under any trust, to grant authority to the trustees to do any of the acts mentioned in the section of this Act relating to general powers of trustees, notwithstanding that such act is at variance with the terms or purposes of the trust, on being satisfied that such act is in all the circumstances expedient for the execution of the trust. . . ." The section of the Act which relates to the general powers of trustees is section 4, and by sub-section (1) thereof it is enacted that—"In all trusts the trustees shall have power to do the following acts, where

such acts are not at variance with the terms or purposes of the trust, and such acts when done shall be as effectual as if such powers had been contained in the trust deed, viz.—(a) To sell the trust estate or any part thereof, heritable as well as moveable. . . .” Circumstances in which trustees who administered a hospital under a deed of mortification which expressly forbade the sale of any part or portion of the mortified estate, were *authorised* by the Court, under section 5 of the Trusts (Scotland) Act 1921, to sell part of the heritable property, the Court being satisfied that the sale was expedient for the execution of the trust.

The Most Noble Charles Henry Gordon Lennox, Duke of Richmond, Lennox, and Gordon, K.G., Lord Lieutenant of the County of Banff, and others presented a petition to the Second Division for, *inter alia*, power to sell heritage.

The petition set forth—“1. That the late Alexander Chalmers, Esquire of Clunie and Knockorth, by trust-disposition and deed of settlement dated 26th August 1830, conveyed to trustees his lands and estates of Knockorth and Cluny, and also his whole burgage tenements and other heritable subjects in the seatown of the royal burgh of Banff, and generally all his heritable and moveable property and rights, heritable bonds, and securities of every description then belonging to him, or that should pertain and belong to him, at the time of his death, but in trust only for the uses, ends, and purposes and under the burden of liferent for her liferent use alienarily in favour of his wife and the whole other conditions contained in the said trust-disposition and settlement. The truster directed that on expiry of the said liferent and fulfilment of the other conditions and directions therein contained, his trustees should denude themselves of the trust and dispone and convey the whole of his heritable and moveable estate to certain other trustees mentioned, in the terms and for the purposes set forth in a relative deed of mortification executed by him of even date with the said trust-disposition and deed of settlement. 2. By the said deed of mortification also executed on 26th August 1830 the said Alexander Chalmers, after narrating the terms of the said trust-disposition and settlement, and subject always to the conditions and provisions of the same, gave, granted, assigned, disposed, and conveyed to and in favour of the Lord-Lieutenant of the county of Banff” and others therein mentioned “the whole estates, heritable and moveable, then belonging to him or which should belong to him at the period of his death, but always in trust for the special uses, ends, and purposes therein mentioned. 3. By the first purpose of the said deed of mortification, dated as aforesaid, the trustees thereunder were directed . . . to apply and expend as much of his said moveable estate as they might find adequate and necessary for the founding, erection, and endowment of a hospital and free dispensary of medicines for the same in the royal burgh of Banff, to be called, known, and described in all time

coming by the name of ‘Chalmers’ Hospital,’ for the support, maintenance, cure, and relief of destitute sick paupers, lunatics, and other diseased and poor infirm persons of both sexes born, domiciliated, and resident in any town or parish of the county of Banff, the inhabitants whereof should make collections at their respective parish churches in aid of the funds of the hospital in manner therein mentioned. The said first purpose then proceeded as follows:— ‘It being hereby specially declared that the benefit of the said hospital is strictly limited and confined to the destitute sick paupers, lunatics, and other diseased and poor infirm persons of both sexes, and of such of the said towns and parishes as shall make and continue to make collections at the churches of the said parishes at the expiry of every three years at least from and after the date of the said first collection for behoof of the said hospital, after public notice being made thereof from the pulpits on the Sunday preceding the said collection as aforesaid.’ By the second purpose of the said deed of mortification the truster appropriated and set apart for the erection of the said hospital the whole of the premises belonging to him in the seatown of Banff, or as much thereof as his trustees might find necessary for that purpose. By the third purpose thereof provision was made for the remuneration of physicians and surgeons attending the patients in the hospital, and the trustees were empowered to employ a superintendent or manager with proper nurses and servants, and to allow such persons reasonable salaries or wages for their services. 4. The fourth purpose of the said deed of mortification was in the following terms:— ‘. . . It being my wish and intention that the funds for the provision of this charity shall be vested in landed property, I declare that the whole landed estate now belonging to me shall remain as a part of the fund of the said hospital, and I further direct that after paying for the founding, building, endowment, and furnishing of the said hospital my said trust disponees shall invest the balance of my said personal estate on good heritable or personal bonds or in Government securities until an eligible opening occur for investing the same in the purchase of land in the county of Banff or adjacent parts of the county of Aberdeen, and I enjoin them as soon as such opportunity occurs to employ the said residue in the purchase of landed property accordingly: And I further direct the interest of the said bonds and other securities, and also the rents, issues, and profits of my said lands and estates of Cluny and Knockorth, and the rents, issues, and profits of my said burgage tenements in the said burgh of Banff, and my whole other heritable subjects whatsoever which may belong to me at my death, and I also direct the rents, profits, and issues and other annual casualties of all and every the lands, heritages of every description that my said trustees may have purchased after my death with the proceeds of my said moveable estate after payment of the public burdens and expense of management, to be applied, expended, used, and employed

along with the amount of the said triennial collections at the said churches for the perpetual support and maintenance of the said hospital, it being hereby specially stipulated, provided, and declared that no part or portion of my said heritable lands and estates shall ever be sold, burdened, mortgaged, impignorated, pledged, or applied for any other purpose whatsoever, as it is my anxious and express desire that my whole free fortune, whether heritable or moveable, after my own death and the death of my said spouse Mrs Elspeth Chalmers, and the payment of the debts, legacies, and other burdens and provisions more particularly specified by me in a separate disposition and settlement executed by me of the date hereof, shall remain for ever pledged and set apart for the sole, exclusive, and perpetual support and maintenance of the said hospital till the end of time: But declaring always that after the said hospital is built it shall not be competent for my said trust disponees to apply any part of the capital of my means and estate to any purpose whatsoever, it being my wish and intention that the same shall remain undiminished, and that only the annual proceeds thereof shall be applied for the maintenance of the said hospital.' 5. By supplementary deed of settlement, dated 4th July 1835, the said Alexander Chalmers, on the narrative that he had since purchased from the trustees of John Morrison of Anchintoul the sixth lot of the lands and estates of Laithers, did thereby ratify and confirm his said trust-disposition and deed of settlement and relative deed of mortification, and he conveyed the said sixth lot of the said lands to and in favour of the trustees under the said trust-disposition and deed of settlement in trust for the uses, ends, and purposes set forth in that deed. 6. The said Alexander Chalmers died in 1835. The purposes contained in his trust-disposition and settlement were duly carried out. In terms of the directions contained in the deeds of mortification an hospital was erected in the burgh of Banff and has been open for many years. It is now conducted under the management of the petitioners, who are the trustees at present acting under the said deeds of mortification and Order, dated 5th May 1911, by the Local Government Board for Scotland as to the appointment by certain parish councils within the county of Banff of additional persons to act along with the trustees acting under the said deed of mortification, in terms of section 30 (4) of the Local Government (Scotland) Act 1894. 7. The subjects administered by the petitioners consist of (a) the subjects in the royal burgh of Banff which form the site of the said hospital, from which no rental is derived, (b) properties in Clunie Street and Fife Street, Banff, with an annual gross rental of £22, 15s., and (c) the estates of Knockorth and Clunie in the parish of Marnoch and county of Banff, and the estate known as the sixth lot of the lands of Laithers in the parish of Inverkeithney and county of Banff, and in the parish of Auchterless and county of Aberdeen. The rental of the said heritable properties—other than the hospital subjects

and the properties in the burgh of Banff—for the year 1920 and the relative burdens thereon were as follows, viz.—

	Gross Rental,	Rates, Taxes,	and Insurance.
Knockorth and Clunie . . .	£1002 11 7	£362 9 2	
Sixth lot of Laithers . . .	1213 6 2	295 0 7	

£2215 17 9 £657 9 9

The total rental of the said subjects for the year 1920 thus amounted to £2215, 17s. 9d. The rates, taxes, and premiums of insurance paid in respect of the subjects for the same period amounted to £657, 9s. 9d. For the previous ten years the average expenditure on repairs to steadings, &c., amounted to £474, 17s. 2d., and since 1918 there has been expended in necessary repairs and renewals of buildings, £1913, 3s. 8d. Plans and estimates have been prepared for further expenditure on buildings, which will have to be undertaken in the immediate future at a cost of about £1800. 8. In the course of their administration the trustees have found it necessary from time to time to carry out repairs, improvements, and alterations upon the said heritable subjects administered by them. It was usually made a condition of such expenditure that the farm tenants should pay interest on the sums expended. Hitherto the cost of such repairs and improvements has been met from the revenue of the estates. In view, however, of the increased cost of maintenance and administration, the free revenue of the landed estates is wholly required for maintenance of the hospital. No part thereof is now available for repairs and improvements of the heritable subjects. As it is inevitable that such repairs and improvements should be executed from time to time, the petitioners have come to be satisfied that to enable the trust to be continued power should be granted to them to sell the said heritable subjects. 9. The petitioners anticipate that from a sale of the heritage a sum of £33,000 might be realised. At 6 per cent. per annum this would yield a revenue of £1980. For the year to 31st August 1920 the total income from the estates was £2257, 5s. 1d., and the total expenditure was £1253, 0s. 4d., leaving a net balance of £1004, 4s. 9d. The petitioners believe that the expenditure in rates, taxes, and maintenance will tend to increase in the future without any corresponding increase in the income. It thus appears that if the heritable subjects were sold the annual income of the trust would be largely augmented, and this (along with the proposed increased power of admission of patients hereinafter referred to) would, the petitioners consider, be sufficient to admit of the trust being continued on a satisfactory basis. 10. Under the fourth purpose of the deed of mortification as above quoted, the trustees are prohibited from selling or burdening any portion of the heritage held by them in trust, but by section 5 of the Trusts (Scotland) Act 1921 it is provided as follows:—'It shall be competent to the Court, on the petition of the trustees under any trust, to grant authority to the trustees to do any of the acts mentioned in the section of this Act relating to general powers of trustees, notwithstanding that such act is at variance

with the terms or purposes of the trust, on being satisfied that such act is in all the circumstances expedient for the execution of the trust.' The general powers of trustees, as defined by section 4 (1) of the said Act, include power 'to sell the trust estate or any part thereof, heritable as well as moveable.' The petitioners are of opinion that in the circumstances which have been explained it is expedient for the execution of the trust that they should obtain power to sell the heritable property of the trust. The petitioners respectfully suggest that they should be authorised to expose the subjects for sale either by public roup or by private bargain, and at such times and in such lots as they may deem to be most expedient. . . . 13. The petitioners accordingly make the present application to your Lordships in virtue of the said Trusts (Scotland) Act 1920, and in the exercise of your *nobile officium*, for powers—(1) to sell the said heritage, exclusive of the properties in the burgh of Banff and hospital subjects themselves; (2) to hold the free proceeds of such sale for the purposes set forth in the said deeds of mortification, but subject to such modifications and alterations thereof as may be sanctioned by your Lordships; and (3) to admit paying patients to the said hospital on conditions to be fixed by the trustees from time to time."

The prayer of the petition craved the Court, *inter alia*, to grant authority to the petitioners and their successors in office as trustees foresaid "(First) To sell the said heritable subjects consisting of all and whole the town and lands of Knockorth, Clunie, and others in the parish of Marnoch and county of Banff; and all and whole the sixth lot of the lands and estate of Laithers and others lying partly in the parish of Inverkeithney and county of Banff, and partly in the parish of Auchterless and county of Aberdeen . . . and that either by public roup or by private bargain, and at such times and in such lots as the petitioners may deem to be most expedient, or otherwise in such manner and on such terms as your Lordships may direct, and to execute all deeds or instruments necessary for effecting such sale; (Second) to hold the free proceeds of the sale, after payment of all expenses and liabilities, to invest the same upon such trust securities as they may think proper, and to apply the income arising therefrom for the purposes set out in the said deed of mortification dated 26th August 1830, but subject to such modifications or alterations as may be sanctioned by your Lordships; and (Third)—[The third head of the prayer related to the admission of paying patients—a point with which this report is not concerned.]"

On 14th July 1922 the Court pronounced an interlocutor remitting to the Vice-Dean of Faculty to inquire into and report upon the facts and circumstances set forth in the petition.

In his report the Vice-Dean of Faculty (CHARLES H. BROWN, K.C.), *inter alia*, stated—"The petitioners are the trustees presently acting under the deeds of mortification by the late Alexander Chalmers, Esquire of

Cluny and Knockorth (hereinafter called 'the founder'), set forth in the petition, and as such the managers of the hospital known as Chalmers' Hospital, Banff, which was erected shortly after the founder's death in accordance with the directions contained in those deeds of mortification. Your reporter has read the trust-disposition and deed of settlement of the founder mentioned in article 1 of the petition, the deed of mortification mentioned and quoted in the second, third, and fourth articles of the petition, and the supplementary deed of settlement mentioned in the fifth article thereof. The terms of these deeds in so far as they relate to the subject-matter of the petition, are correctly set forth in the petition. The founder died in 1835, and the hospital was erected and opened all as set forth in article 6 of the petition. The deed of mortification directs by its first purpose that—[*The Vice-Dean referred to the first purpose for its bearing on the third head of the prayer of the petition, with which this report is not concerned*]. The two further directions by the founder in the said deeds which are of importance are (*First*) the direction in the fourth purpose of the deed of mortification of 26th August 1830 that—[*The Vice-Dean referred to the fourth purpose for its bearing on the third head of the prayer of the petition, with which this report is not concerned*]; and (*Second*) the declaration near the end of the said fourth purpose that no part of the hospital lands and assets mortified for the support of the hospital shall ever be sold, burdened, mortgaged, impignorated, pledged, or applied for any other purpose whatsoever. In the fourth purpose the founder also distinctly expresses his wish and intention that the funds for the provision of 'this charity' shall be invested in landed property. It thus seems clear that the founder intended (a) that hospital treatment should be given free of payment to a restricted class, namely, the destitute sick resident in the county of Banff; and (b) that the trustees under the mortification should not sell the heritable estate. The two objects which the petitioners seek to attain by the present petition to your Lordships both appear to your reporter to be at variance with the terms of the purposes of the trust in these respects. For the petitioners ask authority to admit patients not born nor resident in the county of Banff, and to charge them for treatment in the hospital, and also authority to sell the heritable property. The present case is not, as it humbly appears to your reporter, similar to the case of *Weir's Trustees*, 4 R. 876, where the Court held that although no express power to sell heritage had been conferred upon trustees, none the less to give them power to sell was not inconsistent with the intention and purpose of the trust. A wide power has, however, been conferred upon the Court by section 5 of the Trusts (Scotland) Act 1921 (11 and 12 Geo. V, cap. 58), which is quoted in article 10 of the petition. This section gives the Court power to grant authority to trustees to do acts which are at variance with the terms of the purposes of the trust on being satis-

fed that such acts are expedient for the execution of the trust, and accordingly would appear to have been designed to meet the very case presented here. This section presupposes that the acts which the trustees ask authority to do are at variance with the terms of the trust, and the only point upon which the Court requires to be satisfied is that the granting of what one may call the conflicting powers is expedient for the execution of the trust. The last seven words your reporter respectfully takes to mean 'expedient for carrying out the main design and object of the trust.'—Lord President Inglis used this phrase in his opinion in *Weir's case*, *supra*, in the middle of page 880. The question therefore may be thus stated—Is it expedient for carrying out the main design and purpose of the trust that the powers sought should be granted? Having inquired into the history of the hospital, made a personal inspection thereof, and interviewed several of the trustees and members of the staff your reporter has come to the view, which he respectfully suggests for your Lordships' consideration, that the whole circumstances in and around the hospital have so materially changed since the founder's deed of mortification was penned, that favourable consideration ought to be given to the petitioners' crave in both its branches, and the changes of circumstances to which your reporter refers seem to him to go so closely to the root of the matter that he thinks it right to summarise them. . . . Your reporter has examined excerpts from the accounts of the hospital for a number of years past and finds that the figures set forth in the petition with regard to finance, and in particular the heavy and increasing costs of repairs both to the hospital and the farm buildings upon the lands mortified, are accurate. There is no doubt that not only have circumstances materially changed for the hospital in the respects above set forth but also that the whole financial position of the institution has materially changed. The collections in certain parish churches mentioned in the deeds of mortification are still made but do not bring in any very substantial sums. On the other hand the revenue from the rents of the mortified lands is, owing mainly to the great increase in the burdens upon landed property, much less than it formerly was. In addition to this the petitioners are faced, like everybody else, with the much larger cost of necessary commodities now than formerly. There are now, however, in addition to the rents of the lands and the church collections, two sources of income which were not contemplated in the deeds of mortification, the first being the payments by patients—both county council patients and others—to which reference has already been made, and the other donations, fluctuating in amount from year to year, which are given to the hospital by a number of local subscribers. Taking into account, however, all four sources of income, namely—(1) Rents of lands; (2) the church collections; (3) the payments from patients; and (4) the sums received from subscribers—the income

during the last few years, owing to the large increase of burdens and costs already alluded to, including repairs, has proved insufficient, and in the last three financial years the total expenditure has exceeded the total income by more than £6000. The figures for the last three years are as follows:—

	Free Income.	Yearly Cost.
Year to 31st August 1919	£1874 10 10	£4148 2 4
"    "    1920	2717 13 5½	2699 10 2
"    "    1921	3474 3 5	7678 12 3

These figures as your Lordships will see show a steady increase in the income, and apparently an alarming increase in the yearly cost in 1921 as compared with 1920. Your reporter has inquired into this and has ascertained that the difference between the yearly cost of those two years is truly not so great as those figures represent in respect that certain heavy costs for repairs which could not be met in the year 1920 were transferred to and met by the petitioners in the year 1921. Owing to the inadequacy of their funds the petitioners have had on more than one occasion to defer part of the costs of one year to be defrayed later as funds were available. . . . These figures are liable to considerable fluctuations from year to year, especially the figure in head (4). Moreover, the balance sheet is apt to be occasionally greatly affected by (a) there being in a particular year a substantial sum ingathered from the sale of timber, and (b), on the other hand, exceptionally heavy and costly repairs on the hospital or farm buildings being urgently required. The annual bill for repairs, however, is large even in an ordinary year. . . . The question then seems to your reporter to be—Is it expedient in these circumstances for carrying out the founder's main purpose that any part of the prayer should be granted? To refuse the prayer *in toto* would, so far as your reporter can judge, be fatal to the existence of the hospital, and probably in the end defeat altogether the carrying out of the founder's benevolent intention. Upon the other hand, your reporter humbly suggests that to grant the prayer of the petition without qualification might lead to the purpose of the founder, in so far as it still can be carried out, being defeated, or partly so. So far as the first and second heads of the prayer are concerned, which ask for power to sell the heritage and to reinvest the proceeds, your reporter thinks that a case of expediency has been made out, because even although the petitioners do not get such a large purchase price as they name in the petition, and even although they cannot get now a safe 6 per cent. investment, still the sale of the heritage and reinvestment, say at 5½ per cent., would enable them substantially to increase the revenue available for the hospital by escaping the heavy burdens on land. They would also by doing so escape the heavy costs—which are likely to continue heavy—of keeping up the somewhat numerous farm buildings on the various estates. It is with regard to the third head, which asks sanction for the admission of paying patients and patients

not born or resident in Banff, that your reporter humbly thinks that some qualification is required. . . . On the whole matter your reporter humbly suggests that your Lordships might grant all three heads of the prayer of the petition, but that the third head thereof should be altered so as to read as follows:—[*The Vice-Dean suggested that in admitting patients to the hospital the trustees should be bound to give a preference to the destitute sick belonging to the county of Banff.*]

Argued for the petitioners—Admittedly the powers of sale craved were at variance with the terms of the trust, and accordingly *Weir's Trustees, Petitioners*, (1877) 4 R. 876, 14 S.L.R. 564, was not in point, but under section 5 of the Trusts (Scotland) Act 1921 (11 and 12 Geo. V, cap. 58) it was competent for the Court to grant the powers if such powers were expedient for the execution of the trust. The powers craved were expedient for the execution of the trust, because they would promote its main purpose—*Weir's Trustees, Petitioners, cit., per Lord President* (Inglis) at 4 R. 880, 14 S.L.R. 564, and *Lord Justice-Clerk* (Moncreiff) at 4 R. 881, 14 S.L.R. 566.

LORD JUSTICE-CLERK—This petition by the trustees of Chalmers' Hospital in Banff has been duly advertised and intimated, and no answers have been lodged. The petitioners desire, in the first place, power to sell the heritage which they hold; in the second place, power to admit paying patients to the hospital; and in the third place, they ask for authority to abolish the territorial limit which was imposed by the testator on their operations.

Mr Brown has pointed out that circumstances have completely changed since the institution of this trust nearly a hundred years ago, that there has been supervening legislation, that other institutions have been founded, and that in particular the revenue of this institution has shrunk so seriously—the burdens upon heritage being now so heavy—that it has become well nigh impossible to carry on the hospital under existing conditions. In these circumstances the trustees invoke the power conferred upon the Court by section 5 of the Trusts Act of 1921, and they maintain that it is expedient for the execution of the trust and that it is in furtherance of its main design and object that the powers for which they ask should be granted.

In my opinion the primary object of this trust is to provide hospital accommodation for pauper patients, and if it be the fact, as seems apparent, that that object will be defeated should the powers which are now sought be refused, then I think that the request made seems *prima facie* reasonable. We have had the benefit of a very careful and thorough report from the Vice-Dean of the Faculty upon the whole matter, in which he suggests that the prayer of the petition, subject to one alteration which he proposes, may be granted. I venture to think in the circumstances I have mentioned that the suggestion of the Vice-

Dean should receive effect, and that we should grant the petition subject to the alteration indicated.

LORD ORMDALE—I concur.

LORD HUNTER—I also agree. It is impossible to shut our eyes to the fact that we are making very drastic alterations upon the scheme of the trust. At the same time I am satisfied that the effect of these alterations will be to assist in the circumstances the practical carrying out of the primary intention of the testator.

LORD ANDERSON—I agree with your Lordship.

The Court pronounced this interlocutor—

“Grant warrant to and authorise the petitioners and their successors in office, as trustees mentioned in the petition, (First) to sell the heritable subjects specified and described in the prayer of the petition, which specification and description are here repeated *brevitatis causa*, and that either by public roup or private bargain, and at such times and in such lots as the petitioners may deem to be most expedient, and to execute all deeds or instruments necessary for effecting such sale: (Second) To hold the free proceeds of the sale after payment of all expenses and liabilities, to invest the same upon such trust securities as they may think proper, and to apply the income arising therefrom for the purposes set out in the deed of mortification mentioned in the petition: and (Third) to admit, on conditions to be fixed by petitioners and their successors as trustees foresaid, as patients to the Chalmers' Hospital, Banff, sick and infirm persons of both sexes (whether or not they were born or are domiciled or resident in the county of Banff) who are in a position to pay out of their own funds for medical or surgical treatment, . . . but under the express condition that it shall be obligatory upon the petitioners . . . to give preference to destitute sick paupers, lunatics, and other diseased and poor infirm persons of both sexes born, domiciled, and resident in the county of Banff who shall satisfy the trustees that they are unable to pay for medical or surgical advice out of their own funds.”

Counsel for the Petitioners—A. R. Brown.  
Agents—Alex. Morison & Company, W.S.