be so in a clear and continuous case. This was not such a case of clearness and continuity. The point just stated by my noble and learned friend Lord Atkinson makes that perfectly clear. In short, punctual payment was clearly as the day stated to be a condition which was not dispensed with but was insisted upon.

Their Lordships ordered that the interlocutor appealed from be affirmed and the appeal dismissed with costs.

Counsel for the Appellants — Schwabe, K.C. — Hon. Wm. Watson, K.C. — D. P. Fleming. Agents — Hope, Todd, & Kirk, W.S., Edinburgh — Grahames & Company, Westminster.

Counsel for the Respondents—Macmillan, K.C. — Mackay, K.C. Agents — John C. Brodie & Sons, W.S., Edinburgh — R. S. Taylor, Son, & Humbert, London.

Tuesday, November 30.

(Before the Lord Chancellor, Viscount Finlay, Lord Dunedin, Lord Atkinson, and Lord Shaw.)

CAMPBELL'S TRUSTEES *v.* CAMPBELL

(In the Court of Session, February 7, 1920, S.C. 297, 57 S.L.R. 243.)

Succession — Charitable Bequest — Uncertainty—"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 of his estate "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 (*rev.* judgment of the Second Division, *diss.* Lord Dundas) that the bequest was void from uncertainty.

Symmers' Trustees v. *Symmers*, 1918 S.C. 337, 55 S.L.R. 280, *approved.*

This case is reported *ante ut supra.*

Mrs Agnes Millicent Anderson or Campbell, as executrix of her deceased husband William Frederick Mostyn Campbell, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR — This is an appeal brought by Mrs Agnes Millicent Anderson or Campbell as executrix of her husband the deceased William Frederick Mostyn Campbell, acting under his will, dated the 27th of October 1895, as sole and residuary legatee under that will, against a judgment of the Second Division of the Court of Session in Scotland, pronounced upon a Special Case presented for the opinion and judgment of that Court, in which the appellant was the second party and the respondents were the first and third parties. I find myself in complete agreement with the opinion of Lord Dundas and therefore do not examine the matter at undue length.

The appeal is against the decision of the Second Division upon a direction to trustees, contained in the will which requires construction, to apply the residue "for behoof of such charitable or other deserving institutions in connection with the city of Glasgow as my trustees shall think fit." The case that is made for the appellant is that the direction to which I have just directed your Lordships' attention is void by reason of uncertainty.

There can, I think, be no question that the word "or" in the sentence under consideration is used disjunctively, and that the word "other" distinguishes that word so used very markedly from the language which has been the subject of discussion and decision in other cases. It is extremely difficult to think of a charitable institution which in the opinion of the users of the language contained in testaments would not also be deserving, and having regard to the use of the disjunctive "or" and the use of the word "other" it is inconceivable that the testator in adopting this language did not intend to add to his purely charitable disposition a power to his trustees to make benefactions to institutions other than charitable institutions which resembled charitable institutions in this respect, and in this respect only, that they were "deserving."

I do not propose to follow the learned counsel through the cases, because in my judgment the effect of the cases may now be regarded as clear. We have to assume — indeed I must assume — that we have here a distinct alternative between charitable institutions and deserving institutions. There being, as I have said, two distinct sets of objects here, the conclusion follows, when the House has read not only decisions in the Scotch Courts but also decisions in this House, that a bequest in favour of the one set is valid, and that a bequest in favour of the other set is so vague and indefinite that it cannot be treated as valid. I am unable to distinguish this case from the decision of the Scottish Court in *Symmers' Trustees*, 1918, S.C. 337, where the language used is not "charitable institutions" but "charitable agencies." In my opinion the variation of the phrase between "institutions" and "agencies" is unimportant, and I concur in the decision which was given by the Scotch Court in that case.

It is only necessary that I should point out in conclusion how extremely vague in fact is the phrase "deserving institutions." If such a disposition were tolerated it would enable a testator to appoint another, not indeed in a broad sense, to make his will for him, but according to his individual vagary and idiosyncrasy to make pecuniary benefactions to such an infinite variety of institutions that it would be impossible to conceive a greater breach of the doctrine, which has been laid down in so many familiar cases, that the objects of testamentary bounty must be indicated with a reasonable degree of certainty and precision.

For these reasons I move your Lordships that the interlocutor of the Court below be reversed.

VISCOUNT FINLAY—I am of the same opinion. The question is the shortest one in the world. It is simply this—Does the bequest in this will relate only to charitable institutions, or does it extend to deserving institutions though not charitable? If it is confined to charitable institutions it is good; if it extends to institutions of a deserving nature which are not charitable it is bad. It appears to me beyond all doubt that it is not confined to charitable institutions, and I cannot see how by any process of mental gymnastics one can say that when a man says he leaves money for "such charitable or other deserving institutions" as the trustees may think fit, it can be held that they are confined in their choice of other deserving institutions to institutions which are charitable. "Other" means not charitable, and I cannot see how it can be read otherwise.

I do not go further into the case because Lord Dundas has delivered what, to my mind, is a most admirable judgment, dealing with the whole principle and referring sufficiently to the authorities. I adopt what he said, and I am confirmed in the view that he was right by the fact that his colleagues, while they differed in order that the will might rather be upheld than perish, expressed very grave doubts whether the view they took was correct.

LORD DUNEDIN—I think in this will two alternatives were given. One alternative is obviously bad for vagueness, and therefore the whole bequest must go.

I agree with what the noble and learned Viscount has said about Lord Dundas's judgment, and I would only just like to add this. I think that Symmers' case was rightly decided, that it did not in any way conflict with the two cases in which I took a part in 1908 while I was President of the Court of Session, because the whole ground of my judgments in those cases was that there was not such an alternative.

LORD ATKINSON—I concur. I think it is absolutely impossible to read this bequest as to "charitable or other deserving institutions of a charitable nature," and if it is impossible to read it like that, then the words of the bequest are too wide and too uncertain.

I join with my noble and learned friends who have preceded me in expressing my confidence in, and admiration for, the judgment of Lord Dundas.

LORD SHAW — The judgment of Lord Dundas so fully expresses my own opinion that I do not add anything. I agree with your Lordships.

Their Lordships ordered that the interlocutor appealed from be reversed, that the interlocutor of the Lord Ordinary be affirmed, and that the respondents do pay to the appellant her costs here and below.

Counsel for the Appellant—Dean of Faculty (Constable, K.C.)—T. Graham Robertson. Agents—Wiliam C. Dudgeon, W.S., Edinburgh—Attenboroughs, London.

Counsel for the Respondents—MacRobert, K.C.—J. C. Fenton. Agents—Wilson, Caldwell, & Tait, Glasgow—Cowan & Stewart, W.S., Edinburgh—Hicks, Arnold, & Bender, London.

Friday, December 3.

(Before the Lord Chancellor, Viscount Finlay, Lord Dunedin, Lord Atkinson, and Lord Shaw.)

M'MASTER & COMPANY *v.* COX, M'EUEN, & COMPANY.

(In the Court of Session, May 25, 1920, 57 S.L.R. 504.)

Contract — Sale — Impossibility of Performance — Supervenient Legislation — Jute (Export) Order 1917.

By contracts dated 1st and 2nd November 1917 a firm of jute manufacturers contracted to sell to a firm of merchants certain quantities of jute goods, one-half to be delivered in January and the remainder in February 1918, delivery to be f.o.b. Dundee. On the passing of the Jute (Export) Order, dated 27th November 1917, the sellers wrote the buyers asking for a guarantee that the goods would not be exported from the United Kingdom, or if the goods were for export for the necessary permit from the War Office. Application was made for a permit but it was refused. The buyers then cancelled the contracts.

In an action of damages at the instance of the sellers for breach of contract, *held* (*reversing* the judgment of the Second Division, *diss.* Lord Dundas) that the Jute (Export) Order and the refusal of the permit had not the effect of voiding the contract, there being no contractual terms, express or implied, as to the market in which the goods were to be disposed of, and that accordingly the buyers were in breach of contract in refusing to take delivery.

This case is reported *ante ut supra.*

The pursuers appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR — In this action the pursuers, who are a firm of jute manufacturers in Dundee, sue the defenders, who are jute merchants, for damages arising from failure to take delivery of a certain quantity of jute goods under contracts between the parties. The defenders buy jute in the course of their business both for home and foreign markets. The contracts which fall to be construed, whether one calls them sales or agreements for sale, were entered into on the 1st and 2nd November 1917, and under their terms the defenders ordered and purchased from the pursuers on November 1st 50 bales of 10 oz./40″ chested Hessian at the price of $8\frac{1}{16}$d. per yard, each bale containing about 2000 yards. Delivery was to be f.o.b. Dundee of 25 bales in January and 25 bales in February 1918. On the