which a member is to pay his contribution, and there is no trace in the articles of any method of recovering the contribution except the provision in this article that on such failure he should be fined. The fines might be liquidated from the first moneys paid in by the member. The provision as to forfeiture seems a proceeding which is in no way akin to the case of a forfeiture of shares in a joint-stock company. It is simply one of several covenanted ways in which a person may cease to be a member of the society. The shares might be taken out before maturity, they might be exhausted by advances for building, or fines might be allowed to run up until they reached the limit of the sums paid in, and then the member's connection with the society came to an end. I think the judgment of the Lord Ordinary does not in the slightest degree trench upon what I consider the perfectly sound law laid down in *Moore* v. *Rawlins*.

LORD ADAM—I concur.

LORD M'LAREN — This society is being wound up under the Companies Acts, and there must be some rules and principles common to the liquidations of building societies and joint-stock companies, though in applying these principles we may take into consideration the peculiarities of the constitution of building societies. Your Lordship pointed out some considerations which make it difficult to apply the decisions in regard to forfeiture of shares to a case of this kind. But there are two fundamental rules which are common to both cases—(1) the question whether a man is or is not a member of the company must be fixed as at the date of the liquidation, and as if the company was a going concern; (2) when it has once been established that a person has been a member of the company in liquidation, it lies with him to show that he has ceased to be a member.

As regards article 16 of the rules of the society, it consists of two paragraphs, the second being an amplification of the first and introducing certain conditions. If we had only the first paragraph to consider, then, without difficulty, I should concur in all that the Lord Ordinary has said as to the automatic working of the article. But the second part of the article makes provision for notice being given to each shareholder who may be not less than six months in arrears, such notice to be repeated every three months until the member either pays the arrears or ceases to be a shareholder. It is argued that we must read the provision for intimation as a condition of the right given to the society to cancel the shares. It may be that if a member had not received intimation and afterwards learned that his shares had been cancelled by reason of his failure to pay his instalments, he would have a claim against the society to have his name restored. That is clear, provided the claim were made within such an interval of time as the shareholders might excusably be in arrear. But in the present case twenty years have elapsed since any communications passed between the society and the member, and no application to be restored to the register of shareholders was ever made.

In a recent case in the House of Lords one of the noble and learned Lords made the observation that *mora* was not a separate plea, but that lapse of time was of great moment in determining questions of fact, where the state of the evidence was not the same when the question came up for consideration as it was when the cause of action arose. Are we to assume that the appellant desired to continue a member, and that it was only through want of notice that he did not pay up his arrears, or are we to assume that with the assent of the society and the member the relation of membership was dissolved? It is very improbable that a member who wished to remain on the register would allow twenty years to elapse without doing anything in the nature of taking an interest in or inquiring as to his shares. No notice was sent him by the society, so that on their part also no attempt was made to claim him as a member. In such circumstances it would, in my opinion, be most inequitable to put the appellant on the list of contributories, when it is in the highest degree improbable that he could have successfully asserted his right to be a member had he been so minded. I am therefore of the same opinion as your Lordship.

LORD KINNEAR—I also concur.

The Court adhered.

Counsel for Liquidator and Reclaimer—Wilson, K.C.—Wilton. Agent—George A. Munro, S.S.C.

Counsel for Objector and Respondent—Hunter—Lippe. Agent—W. Croft Gray, S.S.C.

Thursday, November 2.

SECOND DIVISION.

SHAW'S TRUSTEES *v.* ESSON'S TRUSTEES AND OTHERS.

Succession — Trust — Uncertainty — "Such Charitable, Benevolent, or Religious Objects or Purposes within the City of Aberdeen" as the Trustees shall Institute or Select.

A testator by her trust-disposition and settlement directed that the residue of her estate should be applied by her trustees "at their discretion from time to time towards such charitable, benevolent, or religious objects or purposes within the city of Aberdeen as they themselves shall institute or select." *Held* that the bequest was void from uncertainty. *Macintyre* v. *Grimond's Trustees*, March 6, 1905, 42 S.L.R. 466, and *Blair* v. *Duncan*, December 17, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212, *followed*.

Mrs Anne Adam or Shaw, residing at 31 Albyn Place, Aberdeen, widow of the late

Lachlan Campbell Shaw, who resided there, died on 20th December 1900, leaving a trust-disposition and deed of settlement dated 11th May 1889. By said trust-disposition and deed of settlement and codicils Mrs Shaw conveyed her whole means and estates, heritable and moveable, to trustees for the purposes therein specified. She thereby, *inter alia*, bequeathed a number of legacies and annuities, and with regard to the residue of her estates she, by said trust-disposition and deed of settlement, directed her trustees as follows:—"And with regard to the residue and remainder of my said estates, both heritable and moveable, I hereby direct my trustees as under, viz.—Subject to such further bequests as I may hereafter make by any codicil hereto, I hereby appoint that said residue shall be held and invested by my trustees in their own names as my trustees, and that the whole or such part of the capital and revenue, or of the revenue only, as they may think proper, shall be applied by them at their discretion from time to time towards such charitable, benevolent, or religious objects or purposes within the city of Aberdeen as they themselves shall institute or select: Declaring that in so far as said revenue shall not be expended by my trustees annually for the purposes or objects foresaid it shall be added by my trustees to the capital of the trust funds: Declaring further, that the power of my trustees of instituting or selecting said objects or purposes shall be absolute and without appeal or power of challenge at the instance of any society, association, or body, or others, who may allege that they have an interest in said residue or in the revenue thereof."

Upon Mrs Shaw's death the question arose as to whether the directions for disposal of the residue were valid and effectual or void from uncertainty, and a special case was submitted for the opinion of the Court, the first parties to which were the trustees under Mrs Shaw's trust-disposition and deed of settlement, the second and third parties the legal representatives *ab intestato* of Mrs Shaw. The first parties contended that the directions for the disposal of residue were valid and effectual, the second and third parties that they were void from uncertainty, and neither valid nor effectual to dispose of the residue.

The questions of law submitted to the Court were—"1. Are the said directions in Mrs Shaw's trust-disposition and deed of settlement as to the disposal of the residue and remainder of her estates, heritable and moveable, valid and effectual? 2. Are the said directions void from uncertainty, and invalid and ineffectual to dispose of said residue and remainder of Mrs Shaw's estates, and does said residue and remainder form intestate succession of Mrs Shaw, falling to her representatives *ab intestato?*"

Argued for the first parties—The directions were not void from uncertainty. A testator was entitled to select a particular class or classes of individuals and objects for his bounty and then give to some particular individual or individuals a power after his death of appropriating his property to any particular individuals among that class — Lord Lyndhurst in *Crichton* v. *Grierson*, July 25, 1828, 3 W. & Sh. 329, at 338. The only question therefore was, had the testatrix here selected a class. She had. In *Macintyre* v. *Grimond's Trustees*, March 6, 1905, 42 S.L.R. 466, founded on as an adverse authority, there was no local limitation. Here there was, and that was a consideration of the greatest importance—*Miller* v. *Black's Trustees*, July 14, 1837, 2 Sh. & M'L. 866; *Hill* v. *Burns*, April 14, 1826, 2 W. & Sh. 80. Similar bequests for educational purposes had been held valid by the Court, and a bequest for charitable, benevolent, or religious objects with a local limitation was no vaguer than one for educational purposes with a similar limitation—*Ferguson* v. *Marjoribanks*, April 1, 1853, 15 D. 637; *Andrews* v. *Ewart's Trustees*, May 27, 1885, 12 R. 1001, 22 S.L.R. 660. It could not be said that the trustees here had a completely free hand, and that was the *ratio* of *Grimond*. It must be assumed that they would act reasonably.

Argued for the second and third parties—The directions were void. *Grimond*, in which all the authorities quoted above were considered, following *Blair* v. *Duncan*, December 17, 1901, 4 F. (H. L.) 1, 39 S.L.R. 212, settled the question. The words here were vaguer than in *Grimond*, "objects" or "purposes" being wider than "institutions." The so-called local limit was really no limit, as it did not apply to the objects which might be selected, but only to their *locus*. Had the trustees been confined to objects and purposes already existing in Aberdeen it might have been different. As matters stood they were free to make a will for the testator, which was declared illegal in *Grimond's* case. In *Brown's Trustees* v. *M'Intosh*, May 26, 1905, 13 S.L.T. 72, the most recent case on the subject, *Grimond*, was followed.

LORD STORMONTH DARLING—The question is whether the bequest in this lady's will of the residue of her estate to be held by her trustees and applied at their discretion from time to time "towards such charitable, benevolent, or religious objects or purposes within the city of Aberdeen as they themselves shall institute or select" is valid and effectual, or void from uncertainty. The trustees now acting under the will support the validity of the bequest; the representatives *ab intestato* dispute it.

I am of opinion that the bequest must be held void from uncertainty. The case seems to me to be governed by the judgments of the House of Lords in *Blair* v. *Duncan* (1902), App. Cas. 37, and *Grimond* v. *Grimond* (1905), App. Cas. 124. In the former of these effect was refused to a bequest for "such charitable or public purposes as my trustee thinks proper," and in the latter to a direction to trustees to divide a portion of residue among "such charitable or religious institutions and societies as they might select." Here, as

in both of these cases, the enumeration of the two classes of objects or purposes among which the trustees are to select is clearly disjunctive, so that they might competently apply the whole to a religious object or purpose. So far the case of *Grimond* is precisely in point.

But then it is said that the adjection of a local limit—"within the city of Aberdeen"—makes all the difference. It is unnecessary to decide whether the definition of a local area within which existing organisations were to be found would save such a bequest. Something might perhaps depend on the extent of the area; but where it is no larger than a single city, the argument would be that the class of religious organisations existing there at the death of the testatrix was a definite and ascertainable class. But this argument loses all its force when it appears that the trustees are not restricted to such religious objects or purposes as they may find in Aberdeen, but that they may "institute" any religious object or purpose at their discretion so long as they set it up in Aberdeen. This seems to me to throw the whole definition loose, and to leave the trustees free to make a will for the testatrix as were the trustees in *Grimond's* case, which, of course, is the thing struck at by the rule which makes a bequest void from uncertainty.

I am therefore for sustaining the contention of the second and third parties, and answering the questions of law as they propose.

The LORD JUSTICE-CLERK and LORD KYLLACHY concurred.

LORD LOW was absent.

The Court answered the first question of law in the negative and the second in the affirmative.

Counsel for the First Parties—Macfarlane, K.C.—Cullen. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Second and Third Parties—Campbell, K.C.—Grainger Stewart. Agents—Boyd, Jameson, & Young, W.S.

Friday, November 10.

FIRST DIVISION.

[Sheriff Court of Aberdeen, Kincardine, and Banff, at Aberdeen.

ARGO *v.* PAULINE AND OTHERS.

Succession—Will—Meaning of Bequest—Description of Class—"My Relatives of Like Degree in Scotland Living at the Time of My Death."

A testatrix made this bequest—"In regard to the residue of my estate I add the name of Gavin E. Argo, of Scotland, who I wish to divide what falls to him with my relatives of like degree in Scotland living at the time of my death."

Held that a relative in the same degree of relationship as Mr Argo, but whose home and ordinary residence were in Australia, though she happened to be in Scotland on a visit at the time of the testatrix's death, was not within the class whom the testatrix intended to benefit.

Expenses — Multiplepoinding — Appeal — Will—Uncertainty—Unsuccessful Claimant in Sheriff Court Allowed Expenses of Appeal out of the Fund in medio.

Expenses of appeal allowed to an unsuccessful claimant in an appeal from the Sheriff Court out of the fund *in medio*—there being doubt as to the meaning of the bequest, the Sheriff and Sheriff-Substitute having differed, and the action being a multiplepoinding to which the appellant had been called *nominatim*.

By a codicil to her will, dated 1st October 1889, the late Rebecca Elmslie of Philadelphia, U.S.A., who died on 20th March 1900, made this provision—"In regard to the residue of my estate I add the name of Gavin E. Argo of Scotland, who I wish to divide what falls to him with my relatives of like degree in Scotland living at the time of my death."

Thirty-one persons, all of whom were in the same degree of relationship to the testatrix, claimed right to participate equally in this bequest. In regard to the rights of twenty-nine of these claimants there was no dispute—they being all permanently resident in Scotland as well as being all equally related to the testatrix. In regard, however, to the two remaining shares a dispute arose, the said two shares being claimed (1) by the twenty-nine claimants above referred to, equally among them, and (2) by two ladies, Isabella Janet Elmslie and Annie Elmslie, both residing in Melbourne, Australia, one of whom, however, happened to be in Scotland at the time of the testatrix's death, and the other shortly thereafter.

In these circumstances Argo raised the present multiplepoinding in the Sheriff Court at Aberdeen to have the right to the said two shares determined.

In their condescendence and claim the Misses Elmslie averred—"(Cond. 4) The free amount of residue remitted to Mr Argo for division between himself and the other claimants was £6903, 2s. 5d. To each of twenty-nine of the present claimants he has paid £215, 14s. 6d., being one thirty-second part thereof. The balance in his hands, therefore, is £647, 3s. 6d., which, with interest amounting to £12, 1s. 7d., makes up the fund *in medio*, namely, £659, 5s. 1d. Further interest has accrued thereon, and the sum consigned by the real raiser in Court amounts at this date to £663, 2s. 5d. These claimants being related to the deceased in the like degree to Mr Argo, are entitled to participate in the said bequests, and there being thirty-one claimants in all, their share of two thirty-first parts of the said sum of £6903, 2s. 5d. is £445, 7s. 2d., which amount, with interest