

to a preference. On the other hand this right of preference should admit of the reasonable protection of the interests of creditors of a successor in whose possession the assets have been allowed to remain undisturbed. Under the Act 1695, cap. 41, the creditors of the ancestor lose their right unless they do diligence within year and day of his death. But this enactment is, as I have said, limited to the case of no confirmation being taken out. Where there is a confirmation the limit of year and day does not apply. The reason for the difference as stated in the books is that the ancestor's assets included in the confirmation are thereby identified and to be regarded as set aside and held by way of quasi-trust for satisfaction of the ancestor's debts. I do not think, however, that the successor can be said to have only a trust title to the assets. These are no longer *in bonis* of the deceased, but have become the property of the successor. No doubt his right of property is subject to a qualification or burden in the shape of the adverse right which the law gives to the creditors of the deceased of having recourse against these assets for their satisfaction; and to say that the successor holds the assets by way of trust does not seem to me to imply more than the existence of this adverse right which burdens the successor's right of property in them. Now I am unable to see any sufficient reason for holding that this adverse right is a kind of right which is not susceptible of the forty years' negative prescription. I do not mean to say that nothing short of this long prescription will cut off the claims of ancestors' creditors. In many cases these may be cut off by a plea of bar arising on the facts. But I think that such claims, if not followed up, will at least fall on the lapse of forty years; and on this footing I am of opinion that the preferable claims advanced both by the creditors of Sheriff James Traill and by the creditors of George Traill have prescribed. Sheriff James Traill died in 1843, and the period of forty years from his death expired in 1883. George Traill died on 29th September 1871, and the period of forty years from then runs to 29th September 1911. George Traill's creditors contend that in their case, differing, they say, from that of Sheriff James Traill's creditors, the running of prescription was interrupted. The only thing which they point to, however, is the meeting of creditors held on 3rd July 1911. At that meeting it was resolved that the portraits should be sold, and that the prices realised "should be held until the rights of all parties concerned shall be definitely ascertained or agreed upon." I am unable to see that this arrangement involved even an assertion by George Traill's creditors of the preferable right which they now contend for; and if I am right in so thinking, it remains that during the period of forty years from the death of George Traill, his creditors, who are represented in this case, took no steps of any kind to enforce or assert the preferable claim which they now advance. I am therefore of opinion that the preferable claim advanced by George Traill's creditors is, equally with the prefer-

able claim advanced by Sheriff James Traill's creditors, cut off by the negative prescription.

If this be so, the parties who are creditors of Sheriff James Traill and the parties who are creditors of George Traill are relegated to such claims as they may have on the fund *in medio* as creditors of James C. Traill, the granter of the trust deed of 1887. For the purposes of the present case their claims *qua* creditors of James C. Traill fall to be regulated by the terms of that trust deed. The only remaining question is whether these parties, if they claim on the fund *in medio* under the trust deed as creditors of James C. Traill, are bound to value and deduct their heritable securities in stating their claims. I am of opinion that they are. The trust deed under which, *ex hypothesi*, they claim as creditors of James C. Traill so provides.

LORD DUNDAS concurred.

The Court answered the first, second, and third questions in the negative, and the fourth and fifth in the affirmative.

Counsel for the First Party—Chree, K.C.—Wilton. Agents—J. C. Brodie & Sons, W.S.

Counsel for the Second Parties—Christie, K.C.—M. J. King. Agents—Simpson & Marwick, W.S.

Counsel for the Fourth Parties—Hamilton—Cowan. Agents—Stuart & Stuart, W.S.

Counsel for the Fifth Parties—Watson, K.C.—Normand. Agents—Horne & Lyell, W.S.

Counsel for the Sixth Parties—Blackburn, K.C.—Lord Kinross. Agents—Dundas & Wilson, C.S.

Counsel for the Seventh Parties—Macphail, K.C.—D. P. Fleming. Agents—Tods, Murray, & Jamieson, W.S.

Saturday, March 20.

## SECOND DIVISION.

### GLASGOW AND WEST OF SCOTLAND SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, PETITIONERS.

*Charitable Bequest — Administration — Scheme—Charity out of Jurisdiction.*

In the settlement of a scheme for the disposal of moneys under a charitable bequest, in which the petitioners craved the Court to divide the legacy between two societies, one of which was Scottish and the other English, the Court preferred the Scottish society, on the ground, *inter alia*, that the trusts of the scheme must be carried into effect within the jurisdiction of the Court.

*In re Mirrlees Charity*, [1910] 1 Ch. 163, approved and followed.

The Glasgow and West of Scotland Society for the Prevention of Cruelty to Animals, and Robert Latta, Professor of Logic and

Rhetoric in the University of Glasgow, Chairman of the Board of Management, Archibald Reid Ormiston, Convener of the Finance Committee, and Lowndes & Renwick, writers, Glasgow, Secretaries of the Society, *petitioners*, presented a petition to the Court of Session in which they craved the Court to settle and approve of a scheme for the administration of a legacy of £1800 bequeathed to them under the trust-disposition and settlement of Miss Elizabeth Jaffrey, who died at Helensburgh on 10th May 1901, "to be devoted by them specially towards the total and absolute prohibition of vivisection."

The petition stated, *inter alia*—"The difficulties which the petitioners have experienced in administering this fund arise from the vital differences in opinion with regard to the anti-vivisection crusade which exist among the members of the Board of Management and also among the subscribers to the Society. So acute are these differences that the only possible policy for the Society has been and still is to stand entirely aside from that crusade, and to devote its whole energies, for which there is ample scope, for the prevention of cruelty to animals in all other directions in which the use of animals by the human race can give rise to instances of cruelty. Since the publication recently of the Report of the Royal Commission on Vivisection the petitioners feel that the prospect of the removal of the differences of opinion above referred to has become more remote than ever, and that there is no immediate prospect of any change in the policy of the Society. They accordingly feel that they can no longer retain the fund in their own hands in the expectation of devoting it to any anti-vivisectionist crusade to be conducted by themselves.

"They have accordingly had under consideration the best means by which they can carry out the testatrix's instructions to devote the fund 'towards the total and absolute prohibition of vivisection.' For that purpose they have made inquiries as to the work done by the various anti-vivisection societies that are at present in existence in this country. Some of these societies, while keeping in view the prohibition of vivisection, have adopted as the only practical policy for the moment the increasing of the safeguards and restrictions imposed upon those conducting experiments on animals. Other societies, again, are opposed to any such temporising methods, and devote their whole efforts towards the total prohibition of vivisection. The petitioners feel that the work done by the latter societies is more completely in accordance with the expressed intention of the testatrix. The result of the inquiries made by the petitioners has been to lead them to the conclusion that they can best devote the sum entrusted to them 'towards the total and absolute prohibition of vivisection' by handing over that sum, together with the accrued interest, as to one-half to the British Union for the Abolition of Vivisection, and as to the other half to the Scottish Society for the Total Suppression of Vivisection, both of which societies devote their whole efforts to the

attainment of total abolition of vivisection."

The National Anti-Vivisection Society, Victoria Street, Westminster, London, and the Scottish Society for the Prevention of Vivisection, having its offices at Edinburgh and Glasgow, lodged answers to the petition, in which they opposed the scheme and claimed to share in the bequest.

The Scottish Society for the Prevention of Vivisection in its answers stated, *inter alia*—"The respondent Society claims that it is the largest and most influential Anti-Vivisection Society in Scotland at the present time. It has subscribers to its funds all over Scotland. . . . Neither of the societies mentioned in the scheme appended to the petition is doing active work in Scotland to any appreciable extent, and the influence of the National Anti-Vivisection Society in Scotland is now comparatively small. The recent annual reports of these societies . . . show that the funds of the Scottish Society for the Total Suppression of Vivisection are largely employed in subsidising the British Union Society."

The Scottish Society for the Total Suppression of Vivisection and the British Union for the Abolition of Vivisection lodged minutes in which they opposed the claims of the National Anti-Vivisection Society and the Scottish Society for the Prevention of Vivisection.

On 17th July 1914 the Court remitted the petition, answers, and whole proceedings to the Right Hon. Lord Kinross to inquire into the circumstances therein contained, and as to the matters at issue between the parties, and to report.

On 2nd February 1915 the reporter issued his *report* to the effect that in his opinion the two favoured societies were entitled to participate in the bequest in accordance with the scheme, and that The National Anti-Vivisection Society and The Scottish Society for the Prevention of Vivisection were not entitled to participate on the ground that their propaganda was not confined to the total prohibition of vivisection, but also promoted restriction only.

On 19th February 1915 The National Anti-Vivisection Society lodged a minute in which they stated that had they been allowed to lead evidence before the reporter they could have proved that the two favoured Societies also approved of restriction.

On 20th February 1915 the Court heard counsel on the petition, answers, minutes, report and minute of 19th February, and allowed the last mentioned minute to be answered by the British Union for the Abolition of Vivisection and by the Scottish Society for the Total Suppression of Vivisection. The former Society accordingly lodged answers and the latter a minute in which they made averments controverting the statements of the National Anti-Vivisection Society as to their character and aims.

On 9th March 1915 counsel for the various Societies were again heard.

Argued for The Scottish Society for the

Prevention of Vivisection—As a Scottish society they should be allowed to participate in the scheme to the exclusion of the British Union for the Abolition of Vivisection, which was an English society, and over whose funds the Court could not in consequence exercise proper control—in *re Mirrlees Charity*, [1910] 1 Ch. 163.

Argued for the petitioners—Unless the scheme was *ultra vires* it should be approved—*Gerard Trustees v. Magistrates of Monkfeth*, May 28, 1901, 3 F. 800, 38 S.L.R. 617.

The following authorities were also referred to by the various parties—*Charter v. Charter*, 1874, 7 H.L. 364; *M'Lean*, November 4, 1898, 1 F. 48, 36 S.L.R. 46; *Liddle v. Kirk-Session of Bathgate*, July 14, 1854, 16 D. 1074; *Mackay's Manual*, 85; *Trustees of Falkirk Certified Industrial School v. Ferguson Bequest Fund*, July 18, 1899, 1 F. 1175, 36 S.L.R. 924 (*s.v. Shaw Stewart and Others, Petitioners*); *Aberdeen Servants' Benevolent Fund*, 1914 S.C. 8, 51 S.L.R. 1 (*s.v. Maitland and Others, Petitioners*); *M'Grouther's Trustees*, 1911 S.C. 315, 48 S.L.R. 220 (*s.v. Williamson and Others, Petitioners*); *Governors of Lady Burnett of Leys School*, 1911 S.C. 777, 48 S.L.R. 667; *Trustees of the Anderson Female School*, 1911 S.C. 1035, 48 S.L.R. 839 (*s.v. Wauchope and Others, Petitioners*).

At advising—

LORD GUTHRIE—The late Miss Elizabeth Jaffray, Helensburgh, died in 1901. Under her will, dated in 1891, the petitioners hold a sum of £1800 (and accrued interest thereon, which at the date of the petition amounted to £770, 4s. 5d.) in trust “to be devoted by them specially toward the total and absolute prohibition of vivisection.” Being unable, on account of differences of opinion among their members on the subject of vivisection, to arrange for the expenditure of the money for that purpose at their own hand, they resolved to divide the sum equally between The British Union for the Abolition of Vivisection and The Scottish Society for the Total Suppression of Vivisection, to be devoted by these societies towards the total and absolute prohibition of vivisection. This petition has been presented to the Court because, as the petitioners state in their petition, “they have been advised that, as this course will involve a total denuding of the fund intrusted to them, it is right that they should obtain” our approval of the scheme proposed by them. It is unnecessary to consider whether the petitioners might not have divided the fund at their own hand among these or other kindred societies. A scheme has been framed by them, and the Court is asked in the prayer of the petition to settle and approve it, or to settle and approve such alternative scheme as to the Court may see fit. Accordingly the duty is placed on us to deal with the scheme in the way we think best fitted to carry out the deceased's intentions, whether by approving the scheme as it stands, or by giving the whole fund to one of the societies favoured in the scheme, or by substituting another society or societies

for one or both of those approved by the petitioners.

Construing the words above quoted of the testatrix's bequest in view of her will as a whole, and in relation to the societies to whom the money now in question (and the similar fund which has fallen to the Crown as *ultimus hæres*) was bequeathed, I am of opinion that in order to carry out Miss Jaffray's intentions the money ought to go (1) to a Scottish society or societies which will spend the money in Scotland, or on objects relating to the total and absolute prohibition of vivisection connected with Scotland, and (2) to a society or societies whose business it is to work for the total and absolute prohibition of vivisection, as distinguished from restrictive or palliative measures.

There are four claimants for the fund—1. The said British Union for the Abolition of Vivisection; 2. The said Scottish Society for the Total Suppression of Vivisection; 3. The National Anti-Vivisection Society; and 4. The Scottish Society for the Prevention of Vivisection.

The reporter, who has made a very careful and exhaustive report, has, after consideration of the respective claims of these four societies, and the documents founded on by them, approved the selection made by the petitioners.

Full weight has been given by the petitioners and by the reporter to the element second above mentioned, namely, that the object of any society selected ought to be total abolition and not restrictive measures. But it does not appear to me, either from the petition or the report, that the manifest preference of the testatrix for expenditure of her money in Scotland and by a Scottish society has received sufficient effect, although it has evidently not been overlooked.

There is another element requiring attention which impresses me more than it seems to have done the petitioners or the reporter. The Scottish Society for the Total Suppression of Vivisection, founded in 1876, is the only one of the four societies with which it appears clear from the documents that the deceased was connected at the date of the will and at the time of her death, and to which she was a large contributor, and in whose work she took a personal share. Meetings of the Society were held in her house in Helensburgh, and she attended the Society's meetings in Glasgow. She was a patroness of the Society at least as early as 1882, and continued to be so till her death in 1901. She was a member of the Glasgow and West of Scotland Committee of the Society, and she was on the executive of that committee from 1895 till her death. She was a regular subscriber to the funds of the Society, and in 1891, the year of the will, she and her sister gave a donation of £100 to the Society.

The National Anti-Vivisection Society also claims the testatrix as a member, on account of her connection with The Victoria Street Society for the Protection of Animals from Vivisection, founded about 1875. About 1897 the Victoria Street Society was

reconstituted as the National Anti-Vivisection Society. But a number of the supporters of the Victoria Street Society, including the founder, Miss Frances Power Cobbe, and the Bristol branch, refused to support the reconstituted Society, and founded the British Union for the Abolition of Vivisection, on the ground that the efforts of the reconstituted Society were not to be confined, as the efforts of the Victoria Street Society had been, to the total abolition of vivisection, but were to embrace, if not to be mainly directed towards, restrictive measures. There is no satisfactory evidence that Miss Jaffray was a member of the reconstituted National Society, and there is good reason to believe that her sympathies were with those who founded the British Union.

In these circumstances it seems clear that the petitioners were right in selecting the Scottish Society for Total Suppression (which is an independent society, although affiliated to the British Union) as an object to be favoured, and that the reporter was right in approving their selection—first, because the said Society had been actively supported by the deceased; second, because it is a Scottish society; and third, because it devotes its energies solely to the object which she wished to advance. The objections to its claim, based upon its financial position, do not seem to me relevant.

I am reluctant to interfere with the result arrived at by the petitioners, and approved by the reporter. But we have had documents laid before us, and arguments have been presented to us by counsel, which were not before the petitioners or the reporter. The result of a consideration of all the interests involved in the case is that I am not prepared to sanction the selection of the British Union to participate along with the Scottish Society for Total Suppression. The application by the British Union which, it is right to say, is not opposed by the Scottish Society for Total Suppression, is unsatisfactory in three respects—first, the deceased is not shown to have taken any active interest in this Society, whereas she took an active share in the work of the Scottish Society for Total Suppression; second, if the deceased's money should be spent, as I think it ought to be, in advancing her cherished object in Scotland, this can only be effected, if at all, in connection with the British Union by a complicated arrangement for satisfying the petitioners (who do not desire to undertake the duty) or an official of Court (who would find great difficulty in discharging the duty satisfactorily, and who would need to be paid) that the money is so expended, whereas the Scottish Society for Total Suppression can give a full discharge to the petitioners for the money; and third, the British Union are engaged in other propaganda, including anti-vaccination, anti-inoculation, and opposition to the germ theory of disease, which are only indirectly connected with anti-vivisection, and which there is no evidence to show the testatrix would have approved. It would thus be necessary that the British Union should

prove annually, I presume to the same official of Court, that the money proposed to be paid to them was to be spent, or which had been paid to them had been spent, entirely in the cause of the total prohibition of vivisection. Looking to the way in which the work of the society is carried on as a whole, this would evidently be very difficult, if not impossible. I am therefore of opinion, in view of the existence and suitability in all respects of the Scottish Society for Total Suppression to carry out the deceased's intentions, that to order any part of the fund in question to be paid to the British Union would not be to frame the best scheme for giving the fullest effect in the most efficient way to Miss Jaffray's wishes.

I reject the claims of The Scottish Society for the Prevention of Vivisection because that Society does not confine its operations to the total abolition of vivisection, but promotes measures, such as the Exclusion of Higher Animals Bill of 1913, which, however thoroughly carried out, would not produce this result; and therefore the complicated system of receipts to which I have referred would be necessary in its case also. And I reject the claim of The National Anti-Vivisection Society on the same ground, and also because that society is not a Scottish society.

In the circumstances I think all the claimants and minutes should be found entitled to their judicial expenses out of the fund. The petitioners will, of course, be entitled to charge their expenses against the fund in their hands.

LORD SALVESEN—I have had an opportunity in this case of reading the opinion prepared by Lord Guthrie, and as I concur generally in his narrative of the facts and his conclusions in law, I shall confine myself to offering a few remarks on the more general aspects of the case. In the first place, I desire to say that I think there can be no doubt of our right to review the scheme which the petitioners have submitted for our approval. They themselves contemplated that there might be objections which they had not anticipated to the carrying out of the scheme proposed, and they accordingly invoked our aid, if we could not accept their scheme, to settle such alternative scheme as we might think fit. In the next place, I think our primary duty, in considering the scheme to be adopted, is to have regard to the express wishes of the testatrix, to which, for the reasons explained by the petitioners, they are unable to give effect, and to select such objects of her bounty as most nearly fulfil the purpose which she had in view. In this connection it is important to notice that the testatrix was Scotch by birth and residence, and that she selected Scotch societies exclusively as the recipients of her bequests. *Prima facie* it must therefore be considered that she would prefer the money she bequeathed to be expended in Scotland, and not outside Scotland, whether in the adjoining country of England or any remoter parts of the Empire. It was said, on behalf of the

claimants the British Union for the Abolition of Vivisection, that the express object to which the money was to be applied, namely, the total and absolute prohibition of vivisection, might be as effectually attained by a campaign directed to convert Parliament to the views which the testatrix herself entertained, and that such a campaign would be most vigorously prosecuted in London. That may be so from a general standpoint, but not necessarily from the standpoint of the testatrix, who desired to benefit Scotch societies operating in Scotland for the same end. If, therefore, there are Scotch societies which can effectively utilise the money for the purpose prescribed by the testatrix, they are entitled, in my opinion, to be preferred to similar English societies, and this altogether apart from the consideration that we have no jurisdiction over English societies, and cannot control in their case the expenditure of the money solely for the purpose specified by the testatrix herself. This is, apparently, the view on which the Chancery Court in England proceeds as exemplified by the decision of Joyce, J., in *re Mirrieles Charity*, [1910] 1 Ch. 163. In that case, although by the terms of the scheme sanctioned by the Court the trustees were entitled to apply the funds, *inter alia*, "for such other medical charity or charities of any kind as the trustees might in their uncontrolled discretion from time to time determine," it was held that the trustees could not lawfully apply the income to medical charities in Scotland. The ground of judgment was that the trusts of the scheme must be carried into effect within the jurisdiction of the Court. The decision is all the more pointed as the truster was a Scotchwoman with Scotch sentiments who had committed the trust originally to a single Scotch trustee, and that it was the trustee's desire to apply part of the funds towards medical charities in Scotland.

The above ground of decision is by itself sufficient to put the claimants the British Union out of Court. There is, however, an additional and not less weighty reason against their receiving any share of this bequest. While this society no doubt pursues a campaign for the abolition of vivisection, it has recently directed its activities to a campaign against vaccination, inoculation, and the germ theory of diseases, and although it admits that the serums used in inoculation are not now associated with experiments on the lower animals, its antagonism is none the less pronounced on the ground that these serums originally resulted from experiments upon animals. Now there may be a subtle connection between a campaign against vivisection and a campaign against inoculation, but it is not one which is obvious to the lay mind, and there is no reason whatever to suppose that the testatrix was opposed to inoculation, or had any views on the germ theory of disease. What we do know is that she associated herself with the most extreme form of opposition to vivisection, of which the other society that the petitioners propose to favour was the Scottish exponent.

That society has also the merit of having been supported by Miss Jaffray during her lifetime, and although it is at first sight strange she should not have made it her legatee, there may be reasons with which we are not familiar why she should have made the bequest to societies formed for the purpose of preventing cruelty to animals, with the express instruction that these societies should devote the bequest towards the suppression of that form of cruelty to animals which was, she believed, involved in vivisection, even for scientific purposes. On the whole, therefore, I think we are most nearly giving effect to her wishes in approving of a scheme whereby the whole bequest will be paid to the Scottish society with which the testatrix was herself connected, and which has for its only object the total suppression of vivisection, in the furtherance of which cause the testatrix desired her bequest to be expended.

The LORD JUSTICE-CLERK concurred.

LORD DUNDAS was sitting in the Extra Division.

The Court settled and approved of the following scheme for the administration of the legacy referred to in the petition, viz.—"That the legacy of £1800 bequeathed by Miss Elizabeth Jaffrey to 'The Glasgow and West of Scotland Society for the Prevention of Cruelty to Animals,' along with the accumulated income thereon, be paid over to 'The Scottish Society for the Total Suppression of Vivisection,' to be devoted by that society towards the total and absolute prohibition of vivisection in terms of Miss Jaffrey's bequest, subject to deduction therefrom of the expenses hereafter found due."

Counsel for the Petitioners—Leadbetter. Agents—Bell, Bannerman, & Finlay, W.S.

Counsel for the National Anti-Vivisection Society—The Solicitor-General (Morison, K.C.)—Smith Clark. Agents—Henderson & Mackenzie, S.S.C.

Counsel for the Scottish Society for the Prevention of Vivisection—Carmont. Agents—Webster, Will, & Company, W.S.

Counsel for the Scottish Society for the Total Suppression of Vivisection—Constable, K.C.—Wilton. Agents—Pitcairn & Mathers, W.S.

Counsel for the British Union for the Abolition of Vivisection—Macphail, K.C.—MacRobert. Agents—H. & H. Tod, W.S.