have been liable to pay the ship's demurrage if more than thirteen days had been occupied in discharging the cargo. If they have any remedy at all it seems to me that that remedy is not against the ship but against the shipper, and looking to the terms of their contract with him he would seem to have a very plausible defence. The truth of the matter I think is that the defenders at the time when they presented the bill of lading never anticipated that the discharge would be hindered by bad weather to such an extent as was actually the case; but this was just one of the risks which they took in agreeing to a stipulated rate of discharge instead of adhering to the printed clauses of the ordinary charter-party. I am therefore of opinion, differing from the Lord Ordinary on this branch of the case, that the pursuers have established their right to six and a half days' demurrage, and that our decree should be for the amount for which the Lord Ordinary originally decerned.

LORD GUTHRIE—On the question of construction I think the Lord Ordinary has come to a right conclusion. The case is cleared of its chief difficulty once it is admitted by the defenders, as they were bound to do, that the usual principle of construction, namely, that the Court is bound, wherever reasonably possible, to give effect to every undeleted clause in the document they are construing, is inapplicable. They admit that certain parts of article 3 of the charter-party must be treated as if they had been deleted. I agree with your Lordships that the same reasons which compel this admission, make it equally necessary to hold as deleted the words "but according to the custom of the respective ports," on which the defenders rely. I also agree that even if these words be left standing, their application in an article framed like the one the Court is asked to construe must be held as referring to mode of delivery and not to time, except in so far as time is affected by mode of delivery. On the question of Grankull's agency for the charterers, *ad hoc*, in the absence of any other person to act for them, and his power on their behalf to traffic in unused or saved days of loading, I do not differ from the conclusion Lord Salvesen has reached; but I prefer to rest my judgment on this part of the case on the terms of the bill of lading and the defenders' use of it without protest or qualification. I think the pursuers' plea 4 (2) is well founded. The result, as it happens, is to affirm in effect the Lord Ordinary's interlocutor of 13th June 1913, which was pronounced on relevancy.

The Court pronounced this interlocutor—

". . . Recal the said interlocutor: Of new find that the defenders' construction of the charter-party is not a sound construction, and that they are liable in demurrage; fix the same at six and a-half days; and decern against the defenders for payment to the pursuers of the sum of £305, 15s. 5d., being the amount sued for as restricted by condescendence 5, with interest as concluded for. . . ."

Counsel for the Pursuers (Respondents)—Horne, K.C.—A. M. Mackay. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders (Reclaimers)—Sandeman, K.C.—D. Jamieson. Agents—Dove, Lockhart, & Smart, S.S.C.

HOUSE OF LORDS.

Monday, February 28, 1916.

(Before the Lord Chancellor (Buckmaster), Lord Kinnear, Lord Atkinson, and Lord Shaw.)

WORDIE'S TRUSTEES *v.* WORDIE.

(In the Court of Session, January 15, 1915, 52 S.L.R. 306, and 1915 S.C. 310.)

Trust—Charitable and Educational Bequests—Uncertainty.

Held that a direction to trustees, duly appointed, "to pay over the balance or residue of my estates to or for behoof of such charitable purposes as I may think proper to name in any writing, however informal, which I may leave, but failing my leaving such writings, then to such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants"—the testator having left no such writing—was not void from uncertainty, neither on the ground that no power of selection was expressly conferred on the trustees, nor on the ground that the objects to be benefited were insufficiently pointed out.

This case is reported *ante ut supra.*

Miss Janet Wordie and others, the testator's whole next-of-kin, *second parties*, appealed to the House of Lords.

At the conclusion of the argument on behalf of the appellants—

LORD CHANCELLOR — In this case the question that arises for your Lordships' decision is to be found in the will of one Peter Wordie who died on the 27th June 1913. He left surviving him two sisters and some nephews, who together represent the class of next-of-kin, the appellants, in the present proceedings. His will was dated the 28th February 1911. By it he appointed certain people, who are the respondents to this appeal, trustees. He expressed his full confidence in their integrity and their ability to execute the trust he reposed in them, and then he made certain pecuniary bequests and gave certain annuities, and finally created the trust of his residuary estate which has given rise to the present dispute. The pecuniary bequests and annuities are quite trivial in amount in comparison with the total value of the estate, and consequently the residuary gift embraces by far the greater portion of the testator's property. That gift is in these terms—"I direct my trustees to realise and convert into cash the

rest, residue, and remainder of my means and estate then remaining in their hands, and pay and divide the same as follows, namely—First, to pay to the Stirlingshire Charitable and Sons of the Rock Society, Glasgow, the sum of five hundred pounds, to be paid upon the receipt of the treasurer for the time being of said society. Second, to pay over the balance or residue of my estates to and for behoof of such charitable purposes as I may think proper to name in any writing, however informal, which I may leave, but failing my leaving such writings, then to such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants." It is contended on behalf of the appellants that that gift is void, and the grounds upon which that contention depends are these—First, that no power of selection is given to the trustees of the will in order to enable them to determine among which objects of the class mentioned they are to distribute the residuary estate; and secondly, that if the power of selection was in fact conferred, the objects upon which that power is to be exercised are defined in terms so vague and so indefinite that it is impossible they should be accurately ascertained.

It is my clear opinion that neither of those contentions can succeed. The first depends largely upon this, that a contrast is drawn between the selection which the testator expressly reserved to himself and the gift in default of such selection which is to be carried out by his trustees where no power of selection is expressly conferred. But when it is remembered that the trustees are the people named by the testator as the people in whom he has full confidence for executing the trust—that in their hands is reposed the whole of the estate after it has been realised, and that they have to carry out the charitable intention which he expresses—it is not very difficult to infer that he intended that they should also possess the power of selection as to which of the objects included in the wide general description should enjoy the benefit of the gift. Indeed I cannot help thinking that a consideration of the argument of the learned counsel for the appellants must lead one to the conclusion that that is the necessary result of what the testator has done. It is argued that the institutions that he desires to benefit through the instrumentality of his trustees are defined in terms so wide that the gift itself may be bad on that account. I agree that those terms are so wide as to render it impossible to read this gift as one intended to be for the benefit of each specific society that satisfies the given description, but from this it necessarily follows that it must be for some bodies answering that description that some other person may select; and there is no other person in whom the power of selection can reside than the trustees in whose hands the money rests.

That is my opinion upon reading this will, but if I had been less certain and confident of the view I entertain I should have felt great uneasiness about forming an opinion which must alter the law in Scotland as it has been accepted ever since 1837, when the case of *Dundas* v. *Dundas*, (1837) 15 S. 427, was decided. In that case there was a direction that money should be laid out upon charities, and an executor was appointed with power to see that the will was executed. It was held that this necessarily gave to the executor the power of selecting among charitable objects those which should receive the benefit of the testator's bounty. That is in my opinion a case far less strong than the present, where the money is in fact in the hands of trustees who are expressly endowed with all the necessary powers for executing the testator's wishes. I think, therefore, that the learned Judges in the Extra Division of the Court of Session were quite right when they decided that an implied power of selection must reside in those trustees, and when once that is assumed all difficulty ends.

There does indeed remain the question which Mr Macmillan argued, that the objects upon which that discretion is to be exercised are too uncertain to receive recognition by your Lordships' House, but I find great difficulty in following that argument. The one governing phrase within which all these institutions must necessarily fall is that they are to be charitable institutions. It therefore is upon the face of it a charitable gift, and there is nothing to show that there will be any difficulty in discovering institutions of a charitable nature that answer the description which the testator gives. I cannot think that the trustees will find themselves greatly embarrassed in selecting objects within that description, but if they do the assistance of the Courts will be open to them, and this trust can, I have no doubt, be validly executed according to the law of Scotland as it would be according to the law of England.

There only remains the question of costs. The whole difficulty in this case (and it is a difficulty) is entirely due to the testator's own act. It certainly is not surprising, having regard to the scope and character of the will, that the next-of-kin should have availed themselves of every opportunity of attempting to assert that this residuary bequest was not good, and in all the circumstances of the case I am of opinion that the costs of this appeal should be paid out of the residuary estate.

LORD KINNEAR—I agree entirely with the noble and learned Lord on the Woolsack.

It is not disputed that it is perfectly competent for a testator to benefit classes of persons or classes of objects, and to leave to his trustees the task of selecting, among the classes generally pointed at by him, the particular objects or the particular persons who are to receive the benefit of his will. But then it is said that in this particular will there is no power of selection given to the trustees, and I concede that that would be a very formidable objection if upon the true construction of the will it could be maintained, but it seems to me that the

power of selection may be given by implication plain just as well as by express words. I think that was settled so long ago as in the case of *Dundas*, (1837) 15 S. 427, and I do not find that in any subsequent cases in Scotland it has been disputed since.

Now in the will before us the testator appoints trustees in whom he has full confidence, and he gives to them every power which is necessary for carrying out his will. When you come to the particular direction of the will upon which the question arises, it is obvious that unless there be a power of selection in somebody that purpose fails; it is a purpose that cannot be carried out without selection, and I apprehend upon the authority of the case of *Dundas* that it is enough to say that when he has appointed trustees to carry out all the purposes of his will, with all the powers that are necessary to enable them to do so, he gives them by implication such power of selection as is necessary to make this particular bequest effective. That there may be difficulties in the actual selection is possible enough, but that is not a point that goes to the validity of the will. I take it that the true doctrine upon that point is that laid down by Lord Loreburn in the case of *Weir* v. *Crum Brown*, 1908 S.C. (H.L.) 3, 45 S.L.R. 335, that all that is required is that the description should be sufficiently specific to enable men of common sense to make their selection among the objects which are within the ambit of the testator's bequest. I am unable to believe that men of common sense would have any difficulty in selecting proper objects to satisfy the testator's bequest in this case.

LORD ATKINSON—I concur, and I have nothing to add to the judgments already delivered by my noble and learned friends.

LORD SHAW—I concur. May I add these words? It appears to me that for well nigh eighty years a certain construction has been placed and a certain practice has followed upon propositions laid down by Lord Lyndhurst in this House in the case of *Crichton* v. *Grierson*, (1828) 3 W. & S. 329. The decision of the Extra Division in the present case has followed, and in my opinion rightly followed, that construction and practice. The language of Lord Lyndhurst specified the two points—(1) as to the appointment of particular classes of objects of charity, and (2) that there must be a leaving to trustees to select the particular objects within the classes pointed out. Who are the trustees that are thus pointed to? Are they trustees specifically appointed for the purpose of or specifically charged with the duty of selection, or are they trustees in a general sense that they are the recipients of a general power granted under the trust deed to do all the things necessary for carrying out the purposes of the trust deed?

In the case in 1837 of *Dundas* v. *Dundas*, (1837) 15 S. 427, the object pointed out by the trust deed was that the money should "be laid out in charities." The only power given was a "power to see this will executed." There was no further specification than this, and the Court upheld the power of the nominee of the grantees to exercise a power of selection and appropriation among charities.

That was, in my opinion, a broad indication that the law of Scotland interpreted the propositions laid down by Lord Lyndhurst in the sense that a general power to see a will executed or a general nomination of executors under the will, or the constitution of a trust to carry out the trust purposes effectively, worked out in Scottish legal practice the proposition so laid down. That practice was followed for many years. Then there came *Allan's Trust* v. *Allan*, 1908 S.C. 807, 45 S.L.R. 579, and I desire in your Lordship's House respectfully to record my adhesion to the opinion expressed in that case by my noble and learned friend Lord Kinnear. Following these cases is the present, and it appears to me that it would have done violence to the sequence of decisions following upon the propositions laid down by Lord Lyndhurst if any other result than that arrived at by the Extra Division had been reached.

Their Lordships dismissed the appeal with expenses to all parties out of the residuary estate of the testator.

Counsel for the First Parties (Respondents)—Hon. Wm. Watson, K.C.—J. B. Paton. Agents—M'Grigor, Donald, & Company, Glasgow—Macpherson & Mackay, S.S.C., Edinburgh—Grahames & Company, Westminster.

Counsel for the Second Parties (Appellants)—H. P. Macmillan, K.C.—C. H. Brown. Agents—Mackenzie, Robertson, & Company, Glasgow—Martin, Milligan, & Macdonald, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Wednesday, March 1.

(Before the Lord Chancellor (Buckmaster), Lord Kinnear, Lord Atkinson, and Lord Shaw.)

"STRATHLORNE" STEAMSHIP COMPANY, LIMITED *v.* HUGH BAIRD & SONS, LIMITED.

(In the Court of Session, June 29, 1915, 52 S.L.R. 759, and 1915 S.C. 956.)

Ship — Affreightment — Custom — Delivery of Grain Cargoes — Custom of Port — Evidence.

The owners of a ship chartered to carry a cargo of barley claimed right to deliver the cargo at the port of delivery, Leith, in bulk, and not in sacks as received by them at Portland, Oregon. The bills of lading acknowledged receipt of a certain number of sacks of barley "to be delivered in the like good order and condition," and the charter-party provided that the vessel was to discharge according to the custom at the port of delivery. The evidence showed that this trade to Leith in any quantity began in