

in neutral custody, they might have been justified in doing so, but that, having chosen to judge of the matter for themselves, and having refused to deliver the goods to the true owner, they must take the consequences.

I think that these authorities support the view which I take of the case, and in particular show that the averments of knowledge on the defenders' part are not irrelevant. I am therefore of opinion that the interlocutor of the Lord Ordinary must be recalled and a proof allowed. As this case is a very peculiar one, perhaps it would be well that the proof should be before answer.

LORD ARDWALL and the LORD JUSTICE-CLERK concurred.

The Court recalled the interlocutor of the Lord Ordinary and allowed a proof before answer, but in view of negotiations for a settlement postponed issuing an interlocutor.

Counsel for Pursuer (Reclaimers)—Sandeman—Moncrieff. Agent—Wm. B. Rainnie. S.S.C.

Counsel for Defenders (Respondents)—Fleming, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Tuesday, November 17.

FIRST DIVISION.

GREIG AND OTHERS (STEWART'S TRUSTEES), PETITIONERS.

Trust — Education — Bursary Scheme—Alteration of Administration—Power to Alter Scheme from Time to Time Granted by Court to Trustees subject to a Proviso Safeguarding Intention of Testator.

A testator gave specific directions for certain bursaries which were to be given to students who attended the Arts course. The specific directions fitted in with the Arts course as then existing, but subsequently the university altered its Arts course. A petition for alteration of the scheme was presented.

The Court, holding that the proviso after mentioned maintained the certainty that the scheme should be in accordance with the original wish of the testatrix, and was not a delegation of their power, granted to the trustees power to frame regulations for the tenure of the bursaries by students attending the Arts course, and to prescribe the period for which they should be tenable, and to alter from time to time the regulations so made, "provided that the holders of such bursaries shall be bound to attend the said Arts curriculum in the said university for at least three years, and to take such branches of study in each year as the trustees shall in each individual case approve."

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On 17th July 1908 William Greig and others, the trustees acting under the trust-disposition and settlement of Miss Bethia Stewart, dated 27th March 1901, and relative codicil dated 2nd August 1901, both recorded 15th April 1902, presented a petition for authority to modify the regulations under which bursaries of the annual value of £20 each granted to students attending the Arts course at Glasgow University under the provisions of the said trust-disposition and settlement were tenable.

Miss Bethia Stewart, who resided at Moss-side Park, Crossmyloof, Glasgow, and who died on 10th April 1902, by her trust-disposition and settlement and codicil had made over her whole estate to the petitioners as trustees for the purposes mentioned therein.

By the last purpose of the said trust-disposition and settlement it was, *inter alia*, provided—"(*Lastly*) I direct my trustees to apply the income of the remainder of the said residue in perpetuity in forming bursaries for necessitous deserving students attending the University of Glasgow—the bursaries to be of two classes, whereof the first class shall be tenable for four years, consisting of bursaries of an annual sum of £20 each, to be given to students who shall attend the Arts course for four years, taking at least three branches of study in each of the first two years and two in each of the remaining two years, and the second class shall be tenable for three years, consisting of bursaries of an annual sum of £50 each, to be given to students who shall have gone through the curriculum of Arts to enable them to take the course prescribed for medicine or law, provided that all bursaries shall be payable annually in advance during such attendance, but shall be awarded after a competitive examination, both oral and in writing, to be made by two neutral gentlemen of standing and reputation for learning (who shall be paid a reasonable fee for their services), to be named by my trustees, and after they are satisfied that the applicant is of good moral character and in necessitous circumstances."

The petitioners averred—"That the total estate, heritable and moveable, left by the deceased amounted to £51,809, 11s. 2d. . . . The net residue is £24,689, 9s. 5d. The income from this sum, after meeting three annuities of £50 to three infirmaries and an annuity of £10 to Hugh Waterston, is available (subject to administration expenses) for the purposes of providing the said bursaries of £20 each and £50 each.

"That up to the present time the petitioners have accordingly applied the income of the remainder of the said residue to the formation of bursaries of £20 for four years and of £50 for three years, subject to the conditions as to attendance above set forth. So far as the bursaries for £50 are concerned the petitioners do not consider that any alteration is necessary. Owing, however, to changes in the regulations applicable to the course for the degree of Master of Arts at the University of Glasgow, it has become necessary for the petitioners

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to apply to your Lordships for authority to vary the means by which the object of the foundress is attained so far as regards the bursaries of £20 each by modification of the conditions as to the number of years of attendance and number of branches of study to be taken in the respective years above set forth. The foresaid provision in the said trust-disposition and settlement with regard to the said bursaries of £20 each as regards the number of years of attendance and the number of branches of study to be taken in the respective years is in accordance with the regulations formerly governing the course for the said degree of Master of Arts in the said university.

"That the course of study for the said degree of Master of Arts prescribed by the regulations now in force in the said university is, however, materially different from that under the former regulations. In particular, the course prescribed is now one of three and not of four years. Further, by University Court Ordinance No. xxiii (Glasgow No. 6) for the regulation of degrees in Arts, which comes into force in October 1908, the course for the said degree will again be materially modified. Accordingly the course of study set forth in the foresaid provision of the said trust-disposition and settlement has been found to be unsuitable, and will after the said last-mentioned ordinance comes into force be still more unsuitable for persons studying for the said degree. By section ii of the said last-mentioned ordinance it is provided that 'the curriculum for the degree of Master of Arts (M.A.) shall extend over not less than three sessions;' and by section vi of the said ordinance it is provided that 'the curriculum for the ordinary degree of Master of Arts shall consist either of five or six subjects, which shall be studied by attendance on qualifying courses therein.

"When a curriculum of five subjects is chosen, two of these subjects shall each be studied by attendance during two sessions on qualifying courses therein, and the degree examination in these two subjects shall be on a higher standard than the degree examinations in the other three subjects.

"When a curriculum of six subjects is chosen, one of the subjects shall be studied by attendance during two sessions on qualifying courses therein, and the degree examination in that subject shall be on a higher standard than the degree examinations in the other five subjects; and of these five subjects two shall be cognate subjects, and shall be studied by attendance in separate sessions on qualifying courses therein."

"That the course for the said degree will therefore be one of seven classes, instead of the ten provided for by the terms of the said trust-disposition and settlement. The persons eligible for election to the said bursaries are in every or almost every case desirous of obtaining the said degree of Master of Arts, and can only make profitable use of their attendance on an Arts

course by studying for and obtaining the said degree. In this they are and will be materially hampered by the conditions set forth in the said trust-disposition and settlement as to their course of study, which induce and compel them to stretch their course of study for the said degree over a fourth year, to take three classes additional to those approved of and required by the University ordinances, and to arrange their whole scheme of work on a different plan than that contemplated and provided for therein. Students who are desirous of obtaining the degree of Master of Arts with honours are still more severely hampered by the said conditions in the said trust-disposition and settlement.

"That, further, the courses of lectures delivered in the said University are adapted to the needs of students following the course required by the University ordinances, and are unsuitable to persons following the course set forth in the said trust-disposition and settlement. The modern regulations have substituted a higher standard of attainment for the larger number of classes. By insisting upon three classes being taken in each of the first two years instead of two, the existing conditions of the Stewart bursaries make this higher standard very difficult of attainment. The amount of work involved by attendance at two classes each session under modern conditions is considerably greater than that involved even in taking three classes under the conditions contemplated by the said trust-disposition and settlement. . . .

"That the petitioners, after anxious consideration of the facts above set forth, have come to be of the opinion that it is necessary, in order to carry into effect the true intention of the foundress, the said Miss Bethia Stewart, that the conditions as to attendance on the Arts classes should be modified in the manner hereinafter set forth, and at a meeting of trustees held on the 18th day of June 1908 they decided to apply to your Lordships for authority to make the said modification."

The petitioners craved the Court "to authorise the petitioners to modify the regulations under which the bursaries of the annual value of £20 each granted under the provisions of the said trust-disposition and settlement and relative codicil are tenable, as set forth in the said trust-disposition and settlement, viz. — whereof the first class shall be tenable for four years, consisting of bursaries of an annual sum of £20 each to be given to students who shall attend the Arts course for four years, taking at least three branches of study in each of the first two years and two in each of the remaining two years," by substituting therefor the proposed regulations set forth in the petition, viz. — 'whereof the first class shall be tenable for three years, consisting of bursaries of an annual sum of £20 each, to be given to students who shall attend the Arts course for three years, taking at least two branches of study in each year;' or such other regulations as your Lordships shall judge and

determine to be proper and agreeable to the true intention of the foundress."

On 18th July 1908 the Court remitted to J. H. Millar, advocate, "the petition and answers, if any, to inquire as to the regularity of the procedure, and the proposed alteration of administration of the bursary scheme, and to report."

The reporter reported, *inter alia*—"The procedure has been in all respects regular and in order. . . . At the reporter's suggestion intimation has also been made, in accordance with sec. 16 of the Trusts (Scotland) Act 1867, to the Lord Advocate, who has signified that he is not to interpose at the present stage. . . .

"The petitioners explain that no difficulty has arisen in administering the trust so far as the £50 bursaries are concerned. It is in connection with those of £20 that they have found it necessary to invoke your Lordships' assistance in order to enable them to give effect to the intentions of the testatrix. That it is competent for them to apply to your Lordships for that purpose the reporter cannot doubt.

"It will be observed that the testatrix's directions with regard to the £20 bursaries are definite and specific. The bursaries are to be 'tenable for four years,' and 'to be given to students who shall attend the Arts course for four years, taking at least three branches of study in each of the first two years, and two in each of the remaining two years.' What the testatrix contemplated was an Arts course extending over a period of four years and embracing at least ten subjects of study, and there can be no doubt that what she had in view entirely coincided with the scheme of the Arts curriculum as it formerly existed in the University of Glasgow.

"But recent as is the date of the testatrix's settlement, it appears that the directions given by her on this head are already out of date, and cannot be accommodated to the regulations now in force and about to come into force. . . . The effective avenues to a degree in Arts—and practically no one enters upon the Arts curriculum without the intention of graduating—must necessarily be marked out by the ordinances of the University; and for the petitioners to enforce conditions inconsistent with the regulations which happen to be in force for the time being inevitably means that in the long run the very class whom the testatrix obviously desired to benefit must be debarred from participating in her bounty. The reporter ventures to think that the practical necessity for some alteration in the directions for administering these bursaries is conclusively demonstrated by the petitioners' averments.

"The petitioners' substantive proposal is that the bursaries shall be tenable for three years in lieu of four, and that they shall be 'given to students who shall attend the Arts course for three years, taking at least two branches of study in each year.' This suggestion, as your Lordships will not fail to observe, follows closely the scheme of the existing regulations, and it is precisely in that respect that it appears to the

reporter to be open to criticism. To restrict the tenure of the bursaries to a fixed period of three years, for example, might place a serious obstacle in the path of candidates for honours, who would probably stand in special need of the assistance which the testatrix designed to afford. But an objection of a more general kind may be pointed out. It has been shown that since the date of the testatrix's death alterations of such magnitude and importance have been made upon the normal Arts curriculum as to render inappropriate conditions which she plainly framed with an anxious desire to adapt them to the state of matters formerly existing, with which she was familiar. It is impossible to forecast what further drastic changes the lapse of time may produce, and it would be unfortunate if after every successive alteration of the regulations prescribed by ordinance the petitioners were compelled to incur the expense of coming to the Court for authority to amend their bursary scheme so as to meet the changed condition of affairs. The reporter ventures to think that good ground exists for believing that in recent years your Lordships have been disposed, while settling the main objects to which an endowment is to be applied in accordance with the founder's directions, at the same time to leave to trustees or governing bodies as free a hand as possible in the adjustment of the details by which the testator's intention may best be carried out. The reporter would therefore humbly recommend as the best solution of the difficulty which has arisen that the petitioners here should be empowered from time to time to frame and publish regulations with respect to the tenure of the bursaries in question.

"With a view to putting the matter into proper shape the reporter has framed and appended hereto a short scheme for the administration of the £20 bursaries in accordance with the principles indicated above. He has taken the opportunity of adding a clause almost invariably found in bursary schemes, by which the trustees are empowered to deprive of their bursaries any holders whose conduct appears to them to merit the infliction of such a penalty. Should the views expressed by the reporter be so fortunate as to meet with your Lordships' approval, your Lordships may be pleased to remit the scheme back to him with such directions as may enable him finally to adjust it."

The conditions suggested by the reporter in his draft scheme were as follows:—
"1. The trustees shall frame regulations for the tenure of the said bursaries by students attending the Arts curriculum in the said University, and may by such regulations prescribe the period for which such bursaries shall be tenable, provided that the holders of such bursaries shall be bound to attend the said Arts curriculum for at least three years, and to take such branches of study in each year as the trustees shall in each individual case approve. 2. The trustees shall have power from time to time to alter the regulations made by them as

aforesaid for the tenure of the said bursaries. 3. The trustees shall annually publish the terms of the said regulations, and of any alterations made by them thereon as aforesaid in the Glasgow University Calendar. 4. In the event of any holder of a bursary being guilty of grave moral misconduct, or of any serious breach of University discipline, or of any persistent neglect of his or her studies (of the occurrence of any of which events the trustees shall be sole judges), the trustees shall have power to forfeit such holder's bursary. 5. Save as hereinbefore provided, the trustees shall continue to administer the said bursaries in terms of the directions contained in the said trust-disposition and settlement of the said Miss Bethia Stewart."

On 20th October in the Single Bills counsel for the petitioners moved the Court to grant authority to the petitioners to modify the regulations in accordance with the conditions suggested by the reporter, and referred to *Paul (Guardian of Thomson's Mortification), Petitioner*, July 4, 1908, 45 S.L.R. 899.

At advising—

LORD PRESIDENT—In this petition for alteration of the administration of a bursary scheme we have a very complete and excellent report from the reporter to whom it was submitted, and I do not think your Lordships will have any difficulty in granting the prayer of the petition and approving of the scheme which he has prepared. But there is one point of novelty which your Lordships thought it well to consider before judgment was given. The testatrix here gave directions for certain bursaries, which were to be given to students who attended the Arts course, and she gave the directions in specific shape. Now the specific shape at that time when she wrote perfectly well fitted in with the Arts course as it then existed. A difficulty has arisen from the fact that the University has altered its Arts course, and consequently the specific directions given do not accord with the present curriculum. The reporter has brought it to your Lordships' notice not only that this is so, but that also it is quite probable, seeing the tendency of modern times, that the Arts course may be altered again, and he accordingly has proposed that the trustees might have a general power of from time to time altering the regulations which are now approved. Now at first sight it would seem as if by this we were delegating to the trustees the power pertaining by statute [Trusts (Scotland) Act 1867 (30 and 31 Vict. cap. 97), sec. 16] to ourselves and to ourselves alone, namely, the power to modify schemes. But on closer examination I am satisfied that is not the case, because the regulation which the learned reporter has proposed is this—"That the trustees shall frame regulations for the tenure of these said bursaries by students attending the Arts curriculum in the said University, and may by such regulations prescribe the period for which such bursaries shall be

tenable, provided that the holders of such bursaries shall be bound to attend the said Arts curriculum for at least three years, and to take such branches of study in each year as the trustees shall in each individual case approve." And then comes the clause—"The trustees shall have power from time to time to alter the regulations made by them as aforesaid for the tenure of the said bursaries." The regulations, even as altered, will still fall under the proviso I have just read, and the proviso which I have just read is really a proviso which maintains the certainty that the scheme shall be in accordance with the original wish of the testatrix. Accordingly I think the prayer of this petition may be granted, and that the scheme proposed by the learned reporter may be approved.

LORD KINNEAR and LORD SALVESEN concurred.

LORD M'LAREN and LORD PEARSON were sitting in the Extra Division.

The Court approved of the scheme, and appointed it to be the scheme for the future administration of the bursary funds.

Counsel for the Petitioners—Valentine. Agents—Mackenzie & Kermack, W.S.†

HOUSE OF LORDS.

Thursday, December 10.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord Robertson, and Lord Collins.)

NAIRN AND OTHERS *v.* ST ANDREWS AND EDINBURGH UNIVERSITIES' UNIVERSITY COURTS & OTHERS.

(In the Court of Session, November 16, 1907, 45 S.L.R. 122, and 1908 S.C. 113.)

Election Law—Statute—Parliamentary Election—University Franchise—Woman Graduate—Representation of the People (Scotland) Act 1868 (31 and 32 Vict. cap. 48), secs. 27 and 28—Universities Elections Amendment (Scotland) Act 1881 (44 and 45 Vict. cap. 40), sec. 2 (3), (10), and (16)—Universities (Scotland) Act 1889 (52 and 53 Vict. cap. 55), sec. 14 (6).

Held, on a consideration of the statutes dealing with the franchise for universities, that women graduates of a Scottish university are not entitled to vote at the election of a Member of Parliament for the university, and, not being voters, are not entitled to receive voting papers from the registrar of the university.

The case is reported *ante ut supra*. The sections of the Acts of Parliament in question are quoted in the previous report.

The pursuers, Margaret Nairn and others, appealed to the House of Lords,