aforesaid,'" and with that variation adhered and *quoad ultra* continued the cause *hoc statu.*

Counsel for the Pursuer (Reclaimer)—Watson, K.C.—A. M. Mackay. Agents—Kinmont & Maxwell, W.S.

Counsel for the Defenders (Respondents)—The Lord Advocate (Clyde, K.C.)—Macmillan, K.C.—R. C. Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

HOUSE OF LORDS.

Tuesday, January 29.

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

HOUSTON AND OTHERS (TURNBULL'S TRUSTEES) *v.* LORD ADVOCATE.

(In the Court of Session, June 26, 1917, 54 S.L.R. 501).

Succession—Trust—Uncertainty—"Public, Benevolent, or Charitable Purposes" in a Particular Locality.

A testatrix by her trust-disposition and settlement directed her trustees to apply the residue of her estate to "such public, benevolent, or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood as they in their discretion shall think proper."

Held that the bequest could not be read as being to benevolent or charitable purposes of a public character, but must be read as being to three classes of purposes, one of which was "public purposes"; and that so read the bequest was void from uncertainty, the addition of a locality not diminishing the vagueness of the purpose.

Authorities referred to.

Will—Construction—Punctuation.

In construing a will the punctuation of the original deed may be taken into account.

Expenses—House of Lords—Trust—Multiplepoinding—Validity of Residuary Bequest.

In a multiplepoinding brought by testamentary trustees the Court of Session held that the residuary bequest in the trust-disposition was void from uncertainty, found the Crown as *ultimus hæres* entitled to the residue, and allowed the trustees expenses out of the trust funds. The trustees having appealed to the House of Lords, their Lordships when dismissing the appeal *refused* the trustees their expenses in the appeal out of the trust funds, but of consent did not find expenses due by them.

This case is reported *ante ut supra.*

Houston and others, the testamentary trustees of the late Mrs Turnbull, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The question in this case is as to the validity of a clause in the trust-disposition and settlement of Mrs Turnbull, dated 22nd September 1894. The testatrix directed that the residue of her estate should be disposed of as she should direct by any writing or codicil under her hand. The clause then proceeded as follows:—"And failing any such then I hereby direct my trustees to hold such residue until such time or times as they see fit and apply the same for such public, benevolent, or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood in such sums or under such conditions as they in their discretion shall think proper."

No direction in writing or by codicil was given by the testatrix, and the question arises whether the bequest for public, benevolent, or charitable purposes is good. It has been settled by a decision of this House—*Blair* v. *Duncan*, [1902] A.C. 37, 4 F. (H.L.) 1, 39 S.L.R. 212, *sub voce Young's Trustees*—that a bequest "for such charitable or public purposes as my trustee thinks proper" is void for uncertainty. In such a clause the words "charitable or public" are used disjunctively, and, as Lord Shand says at p. 42 of the report, "a bequest for public purposes to be taken by a person or persons named by the testator, unlike a bequest expressly limited to a charitable purpose, is not sufficiently definite, but is too vague and wide to form the subject of a valid bequest." While "charitable purposes" have a defined meaning both in England and Scotland, "public purposes" are in their nature entirely uncertain. The same rule has been applied in the case of *Grimond* v. *Grimond*, [1905] A.C. 124, 7 F. (H.L.) 90, 42 S.L.R. 466, reversing the decision of the Court of Session in the case of a bequest to "such charitable or religious institutions or societies" as the trustees might select. The term "religious" was held to be too vague, and as the words were to be read disjunctively the bequest was void on the principle which was applied in *Blair* v. *Duncan.*

Mr Chree for the appellants in the present case sought to distinguish these authorities on the ground that there was no local limit in the bequests there, while in the present case the purposes are to be in connection with a particular parish or the neighbourhood. It is quite true that the absence of any restriction as to locality is adverted to in some of the judgments in *Blair* v. *Duncan* as adding an additional element of vagueness to the bequest. Lord Robertson says at p. 47 of the report—"It seems to me that this testatrix has done nothing like selecting a particular class or particular classes of objects. She excludes individuals, and then leaves the trustee at large with the whole world to choose from. There is nothing affecting any community on the globe which is outside the ambit of his choice." But while this consideration emphasised the vagueness of the bequest in the particular case, it was not really necessary for the decision, which rests upon the vagueness of the purpose whatever the locality

within which the purpose is to be served. This sufficiently appears from the judgments of Lord Halsbury, Lord Shand, and Lord Davey in *Blair* v. *Duncan*, and the vagueness of the purpose itself apart from locality is pointed out in the clearest terms by Lord Robertson himself at p. 48. The addition of a local limit might well make a difference in favour of a bequest if the bequest was in favour of institutions within a certain area, the particular institution to be selected by the trustee. This distinction is pointed out by Lord Stormonth-Darling in his judgment in *Shaw's Trustees* v. *Esson's Trustees*, 1905, 8 F. 52, at p. 54, 43 S.L.R. 21, where the whole subject is discussed in a very lucid and valuable judgment. Mr Chree relied in support of his contention upon the case of *Dolan* v. *Macdermott*, L.R., 5 Eq. 60, where the Master of the Rolls (Lord Romilly), after saying that a bequest for such public purposes as the trustees select would be bad, goes on to say that if a place is connected with the gift so that the public purposes must be for the benefit of the place specified, then it is good. I do not think this dictum is correct. The decision of Lord Romilly was affirmed on appeal (L.R., 3 Ch. 676) by Lord Cairns, L.C., but not on this ground.

It follows from the decision to which I have referred that if the clause is to be construed as being for such public or benevolent or charitable purposes in connection with the locality as the trustees think proper it would be bad. The purpose is too vague, and the vagueness of the purpose is not cured by the specification of the locality to be benefited. It was contended, however, on behalf of the appellant that the clause should not be read as applying to public or benevolent or charitable purposes, but that on its true reading it was for the benefit of benevolent or charitable purposes of a public nature in connection with the parish, and that so construed it would be good, as "benevolent or charitable purposes" would be held to be charitable purposes. It appears to me that, read without the punctuation which appears in the will as printed in the appendix, this is quite a possible construction, and where words are ambiguous a construction should be adopted which will not make the bequest void. But we are informed that the comma after the word "public" and that after the word "benevolent" appear in the original will, and this points plainly to the conclusion that "public" was intended as an alternative to "benevolent or charitable"—in other words, that the clause must be read disjunctively.

The authorities as to the effect to be given to punctuation in a will are not quite uniform. In *Sanford* v. *Raikes*, 1816, 1 Meriv. 646, Sir W. Grant says at p. 651—"It is from the words and from the context, not from the punctuation, that the sense must be collected," and in *Gordon* v. *Gordon*, L.R., 5 H.L. 254, at p. 276, Lord Westbury says *obiter* that he concurred in the opinion so expressed by Sir W. Grant. But there are opinions the other way. Wood, V.C., is reported in a note at p. 803 to the case of *Walker* v. *Tipping*, 9 Hare; Sir John Romilly, M.R., in *Gauntlett* v. *Carter*, 17 Beavan 586, at p. 591; and Knight Bruce, L.J. (see the note to the case of *Manning* v. *Purcell*, 24 L.J., Ch. 522, at p. 523), expressed the opinion that the punctuation in the original will might be looked at for the purpose of helping in its construction. I think that for this purpose the punctuation of the original will may be looked at, and reading this clause as punctuated, the words "public, benevolent, or charitable" are clearly to be read disjunctively. It follows that the bequest is bad from uncertainty.

In my opinion the appeal should be dismissed with costs.

VISCOUNT HALDANE — [*Read by Lord Dunedin*]—By the law of Scotland, as by that of England, a testator can only defeat the claim of those entitled by law in the absence of a valid will to succeed to the beneficial interest in his estate, if he has made a complete disposition of that beneficial interest. He cannot leave it to another person to make such a disposition for him unless he has passed the beneficial interest to that person to dispose of as his own. He may indeed provide that a special class of persons, or of institutions invested by law with the capacity of persons to hold property, are to take in such shares as a third person may determine, but that is only because he has disposed of the beneficial interest in favour of that class as his beneficiaries. There is, however, an apparent exception to the principle. The testator may indicate his intention that his estate is to go for charitable purposes. If these purposes are of the kinds which the law recognises in somewhat different ways in the two countries as charitable, the Courts will disregard a merely subordinate deficiency in particular expression of intention to dispose of the entire beneficial interest to a class, and will even themselves by making a scheme of some kind give effect to the general intention that the estate should be disposed of for charitable purposes. To the expression "charitable" the Courts respectively of the two countries attach the meanings which were discussed in this House in *Commissioners of Income Tax* v. *Pemsel*, [1891] A.C. 531. It is not necessary in this appeal to define the significance of the expression, for all that is necessary on this occasion is to point out that by other decisions of this House, such as *Blair* v. *Duncan* (*cit. sup.*), it has been settled that the expression "public purposes" has a wider meaning than "charitable purposes," and includes much that does not fall within the latter expression. To take the illustration given by Lord Robertson in advising this House in *Blair* v. *Duncan*, if a trustee handed over a sum of money to an election fund or a Yeomanry regiment, he would be giving it for a public but not for a charitable purpose. Trusts for charities have been regarded with favour as constituting a particular class recognised as sufficiently definite to enable a testator to leave his property on such a trust, and to empower a third person to determine the shares in which those falling within the class are to

participate in his bounty. Trusts for public purposes have not been regarded by the Courts as constituting a class so particular and definite as to be capable of taking under an analogous disposition.

In the case before us the direction to the trustees is to hold the testator's residue "for such public, benevolent, or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood in such sums and under such conditions as they in their discretion shall think proper." Notwithstanding the reference to Lesmahagow or its neighbourhood, the purposes are not the less of the very general and indefinite character which is all that the word "public" connotes. And I am of opinion that the word "or," especially as the commas which follow appear in the original will, shows what the testator intended was to make a disjunction. The disposition is therefore inoperative as regards the residue, for the trustees are not bound to distribute the property among objects restricted to any defined class which can form a valid object for a disposition.

I think that the appeal must therefore be dismissed.

Lord Dunedin—I have had the advantage of seeing the opinion which has just been delivered by the noble and learned Lord on the Woolsack; that opinion so clearly and precisely expresses the views I have formed on the case that it is unnecessary that I should trouble your Lordships with any further remarks.

Lord Atkinson—Having regard to the wording and punctuation of the clause in the will of the testatrix, upon which the question for decision in this case turns, I do not think it can be legitimately construed as if it ran, "Public purposes, either benevolent or charitable"; or "purposes benevolent or charitable of a public character." I think the Lord Justice-Clerk was right in assuming that the clause meant the same thing as if it ran thus—"Public purposes or benevolent purposes or charitable purposes," the conjunction "or' being in each case disjunctive. If the clause stopped there and contained no reference to the parish of Lesmahagow or its neighbourhood, it would appear to me to be clear, on the authority of *Blair* v. *Duncan* (*cit. sup.*), that the bequest would be void by reason of the vagueness and uncertainty of the words "public purposes," no particular class or particular classes of individuals or objects being defined or precisely indicated from amongst which the trustees are empowered to make their selection of the recipients of the bounty of the testatrix. The bequest therefore does not satisfy the test suggested by Lord Lyndhurst in *Crichton* v. *Grierson*, 3 W. and S. 329.

No doubt in *Blair* v. *Duncan* (*cit. sup.*) there was no indication of a defined area within which the public purposes were to be comprised. The testatrix, to use Lord Robertson's words (p. 4), "excludes individuals and then leaves the trustee at large with the whole world to choose from. There is nothing affecting any community on the globe which is outside the ambit of his choice"; but the vast extent of this "ambit of choice" was not the only thing which in the opinion of the House rendered the bequest in that case void. It was rendered void, according to Lord Halsbury, because a disposition which left it to the trustee to determine what particular public purpose should be the object of the trust was too vague and uncertain for any Court either in England or Scotland to administer. And it was void, according to Lord Davey, because "public purposes" were not within the description of a particular class of objects to satisfy the test which Lord Lyndhurst suggested. The purposes which would come within the description were, as he pointed out, vast in number, and were sometimes of a kind which would have reduced the gift in the case before him to an absurdity. It is the insufficiency of these words "public purposes," because of their vagueness and uncertainty, to identify and fix the limits of the class of individuals or objects from which the trustees are to choose that renders void a bequest for "public purposes." That is their weakness, and that weakness is not cured by coupling them with a definition or description of the physical area in which the public purposes are to be comprised. It may possibly be that the words "public purposes," are more vague and uncertain where the trustees have the whole world as the ambit of choice than where the ambit is limited to a much smaller area, but they are sufficiently vague and uncertain, even if applied to parishes, to render them insufficient to define and fix the limits of the class or classes from which the trustees are to make their selection.

I do not think that this case has the slightest resemblance to those in which property is vested in trustees to be applied for the support or benefit of such institutions of a particular class as may be in existence, or in the course of creation, in any given town or area at the time at which the will speaks. There is no vagueness or uncertainty in such cases at all. The class from which the trustee is to make his choice can be at once ascertained and identified, but if, as in the case of *Shaw's Trustees* (*cit. sup.*), the trustees are not confined to applying the trust funds for the benefit of such institutions, objects, charitable, benevolent, or religious, as they may select from amongst those existing in the limited area at the time from which the will speaks, but are at liberty to institute within the area any new religious objects or purposes they think fit, the whole definition then becomes loose again. This was well pointed out by Lord Stormonth-Darling in his judgment in the latter case.

It is, I think, fallacious to contend that because it must now be taken as established that according to the law of Scotland the Courts will give effect to a bequest for charitable purposes to be selected by a third party, they ought by analogy to give effect to a bequest for "public purposes" to be similarly selected. As Lord Davey

pointed out in *Blair* v. *Duncan* (*cit. sup.*), the expression "charitable" is not as vague as the word "public," but that whether it be so or not, a long course of decision has established on the one hand the validity of a bequest for such charitable purposes as an individual should select, and on the other the invalidity of a similar bequest for such public purposes as an individual should select.

I think the passage cited from the judgment of Lord Loreburn in the case of *Weir* v. *Crum Brown*, 1908 A.C. 162, 1908 S.C. (H.L.) 3, 45 S.L.R. 335, by some of the Judges in the Second Division, has really been divorced from the particular matter to which it referred. At the bottom of p. 166 of the report he said the recipients of the bounty were, amongst other things, to be widowers or bachelors of 55 years of age or upwards, whose lives had been characterised by sobriety and other specified virtues. They were to be indigent—a provision which stamps the bequest as charitable. These conditions were not really canvassed in argument, and need not be further considered, for no one of them is such as to impart to the bequest an uncertainty which will disentitle it in law. The only point seriously made against the contested clause in that will was that the recipients of the charity were to be persons who have "shown practical sympathy in the pursuit of science." Lord Loreburn then, for the greater part of the page 167, deals with the criticisms made by counsel on this particular clause, and in reference to them makes use of the language quoted. Lord Macnaghten at p. 169 deals with the same clause. He shows that the word "science" is by no means a word of a definite or particular meaning, that there are many enactments in favour of institutions for the advancement of science, and that the generality of the word had never prevented the Court from applying to the particular case before it the provisions of the Act under consideration. As to the words "practical sympathy," he said, though not nappily chosen they are perfectly intelligible; that the wish of the testator was to help those who are in need of help and who may have done something, much or little, in the way of promoting some branch of science. Lord Robertson (p. 169), after saying that the case was perfectly clear, proceeded to say—"If it is said of anyone that he has shown practical sympathy in the pursuit of science, this is merely a roundabout way of saying that he has helped the pursuit of science, just as to show 'practical sympathy' with A B means to help A B. Again, the word 'science' embraces a wide but perfectly ascertainable range of subjects. Accordingly I consider the meaning of this testator to be plain and intelligible."

I do not think it is legitimate to treat Lord Loreburn's observations as laying down an absolute rule for the solution of all doubts in the construction of claims in wills such as that to be construed in this case. I think the appeal fails and should be dismissed with costs.

LORD SHAW—By the trust settlement of Mrs Turnbull she directed her trustees to hold the residue of her estate "till such time or times as they shall see fit, and apply the same for such public, benevolent, or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood, in such sums and under such conditions as they in their discretion shall think proper."

The Lord Advocate maintains that this bequest is void from uncertainty, and that as Mrs Turnbull left no heirs entitled to succeed to her property *ab intestato*, the residue thereof falls to the Crown as *ultimus hæres*.

Mr Chree in his admirable argument admitted that a bequest "for such public, benevolent, or charitable purposes" as the trustees might select would, if these purposes were construed disjunctively, be void. This admission was inevitable in the state of the authorities. These need not be resumed. *Blair* v. *Duncan* (*cit. sup.*) and *M'Intyre* v. *Grimond* (*cit. sup.*) are directly in point.

But it was suggested the words "public, benevolent, or charitable purposes" can, and therefore should, be read conjunctively as meaning charitable purposes which are of a public and benevolent nature. So it was said the gift was only meant to be applied to charities—in which case the law would protect it as valid—and would write out therefrom benevolence or charities which were of a private nature. I cannot so read the words themselves. The punctuation also is against such a reading. I beg to give my special concurrence with the opinion just delivered from the Woolsack on this latter subject. Punctuation is a rational part of English composition, and is sometimes quite significantly employed. I see no reason for depriving legal documents of such significance as attaches to punctuation in other writings.

Taking the phrase as it is framed, it seems to me impossible to exclude from its range public purposes as such, and therefore public purposes which are not necessarily of a charitable character. Accordingly everything with a public purpose—say party political propaganda selected by the trustees for the advantage or proper enlightenment in their opinion of the parishioners of Lesmahagow—could be financed from the funds of Mrs Turnbull's trust.

In the eye of the law charity has this saving grace, that it is held to be by itself denominative of a distinct class. This extends far. But the law has taken a firmer and more rigorous line in regard to public or religious purposes. It demands from the testator the selection by himself of the particular classes of individuals or objects. The classes may be wide, but they must be definite and clear. The ambit of the classes being thus fixed by the testator, a power of selection within that ambit may be entrusted to others.

Substantially the argument of the appellant was that this law against uncertainty, now too well established to be shaken, does not apply in the present case, because the

uncertainty and consequent ineffectiveness of the bequest are removed by the local limitations imposed. But local limitations expressed by the words "in connection with the parish of Lesmahagow or the neighbourhood" do not add any definiteness to the class of purposes or objects which it was in the mind of the testator to benefit or promote. The foundation of political clubs, schools of art, a zoological garden, or an astronomical observatory in Lesmahagow, along with a thousand other things in connection with that parish or its neighbourhood, might in the trustees' opinion be excellent, but the bequest is void by reason of the uncertainty as to which of them or which class of them the truster meant to favour. This is exactly the reason which invalidates the bequest where there is no geographical reference.

Local limitations do come into play and make the bequest effective if and when they provide the means of identifying the particular objects or institutions which the testator has meant to benefit. I am of opinion that the local connection cannot limit the area of selection of purpose, unless the reference of the testator is to persons, societies, agencies, or institutions actually existing or projected to be established in a particular district.

I agree respectfully with the opinions in the case pronounced by the Lord Justice-Clerk and Lord Salvesen.

Their Lordships dismissed the appeal, but without expenses.

Counsel for the Appellants—Chree, K.C.—M. P. Fraser. Agents—Moncrieff, Warren, Paterson, & Company, Writers, Glasgow—Webster, Will, & Company, W.S., Edinburgh—Grahames & Company, Solicitors, Westminster.

Counsel for the Respondent—The Lord Advocate and Dean of Faculty (Clyde, K.C.)—Forbes. Agents—James Ross Smith, S.S.C., Edinburgh—The Treasury Solicitor (Law Courts Branch).

COURT OF SESSION.

Friday, January 11.

FIRST DIVISION.

ALLAN'S TRUSTEES *v.* ALLAN.

Succession—Trust—Vesting—Dies incertus—Vesting Subject to Defeasance or Suspended Vesting.

A testator directed his trustees to pay one-third of the income of his estate to his widow during her life and to pay or apply to or for behoof of his lawful children the remaining two-thirds of the income in such manner and at such time or times as they might think proper until the youngest surviving child attained the age of twenty-one years complete. He further provided—"Upon the youngest surviving child attaining twenty-one years complete my trustees shall divide the residue equally amongst my children, the lawful issue of any of them predeceasing being entitled equally among them to the share which would have fallen to their parent if alive." The testator was survived by a widow and four children. Before the youngest child attained the age of twenty-one another daughter died without ever having married. *Held* that the share of the daughter had vested in her *a morte testatoris*, subject to defeasance in the event of her predeceasing the term of payment leaving issue, in favour of such issue.

Authorities examined.

William Smith Storie and another, the testamentary trustees of Andrew Allan, solicitor, Falkirk, *first parties*, Mrs Allan, his widow, *second party*, and Robert Andrew Craig Allan and others, his surviving children, *third parties*, brought a Special Case to determine questions relating to the vesting of the residue of his estate.

Andrew Allan died on 30th May 1899 leaving a *trust-disposition and settlement* dated 12th January 1892, which conveyed his whole means and estate to the first parties for various purposes, which included —"(*Second*) For payment to my sisters Barbara Gibson Allan and Jane Blair Allan of an annuity of twenty pounds sterling per annum, each, payable in equal portions half-yearly at Martinmas and Whitsunday, beginning the first payment at whichever of these terms shall first occur after my death, and that free of legacy duty; (*Third*) One-third part of the free interest or income of my said means and estate remaining after providing for the foresaid annuities I direct my trustees to pay or apply to or for behoof of my wife in such manner and at such time or times as they may think proper during her lifetime; (*Fourth*) The remaining two-third parts of the said interest or income of my said means and estate I direct my trustees to pay or apply to or for behoof of my lawful children in such manner and at such time or times as they may think proper until the youngest surviving child attains the age of twenty-one years complete; (*Fifth*) Upon the youngest surviving child attaining twenty-one years complete my trustees shall, after setting apart sufficient portions of my means and estate to meet the foregoing provisions in favour of my sisters and wife, divide the residue equally amongst my children, the lawful issue of any of them predeceasing being entitled equally among them to the share which would have fallen to their parent if alive; and (*Lastly*) the portions of my means and estate set apart, as aforesaid, shall, as they are set free by the deaths of my said sisters and wife respectively, be divided among my said children in the same way as the rest of the capital before mentioned. . . . And I declare that the foregoing provisions in favour of my wife and children are and shall be accepted by them in full satisfaction of everything they could ask or claim at my death, whether in name of *jus relictæ*, terce,