

were informed by the prosecutor that the prisoner had been served with a new libel, to be tried on the 14th of this month, and it had been represented to the Court that even if the complainer had served his criminal letters on the Lord Advocate on 29th January he could not have compelled his trial within the time which has since elapsed under the Act 1701. It was manifest that if the Court were to grant liberation now other questions would remain behind as to whether a fresh warrant could be granted, and which might, in point of fact, have the effect of delaying instead of accelerating the ultimate termination of these proceedings. In these circumstances, and as the inclination of the majority of the Court appeared to be in favour of this course, he was prepared, though with reluctance, to acquiesce in the refusal of the petition, but solely on the ground that the public prosecutor had intimated that he was prepared to proceed with the trial on the 14th June.

The other Judges concurred, and the Court refused the prayer of the petition.

Counsel for Petitioner—Dean of Faculty (Clark) and Crichton.

Counsel for Crown—Solicitor-General (Watson) and Muirhead.

COURT OF SESSION.

Tuesday, June 8.

SECOND DIVISION.

SPECIAL CASE—BRUCE'S TRUSTEES v.

BRUCE.

Succession—Testament—Legacy—Falsa Demonstratio.

By a holograph codicil a testator bequeathed to his son "all the Gas Companies shares that were lately bought by me from Mrs T. Bruce's Trustees for £300." There were no Gas Company's shares purchased by the testator for £300; but he had, about six months before the date of the codicil, purchased from Mrs Bruce's Trustees, as one transaction, shares in various gas companies for £798, and some shares in a steelyard for £2. Held that the words "for £300" must be taken as a mere *falsa demonstratio*, and were not intended to be taxative of the bequest, and consequently that the legatee was entitled to the whole gas shares purchased by the testator from Mrs Bruce's Trustees.

This Special Case was raised by the Trustees of the late Col. Tyndall Bruce, of the first part, and Andrew Hamilton Tyndall Bruce, of the other part, to determine whether the said party of the second part was entitled to all or any of certain shares in virtue of a bequest by the party of the first part.

The material facts were—Lieutenant-Col. Bruce died on 6th July 1874, aged 85. In November 1873 he purchased from Mrs Tyndall Bruce's Trustees certain shares in local companies, chiefly gas companies, at the prices stated in the second article of the case:—

1. 234 shares of the Falkland Gas Company, at the price of	£468 0 0
2. 4 shares of the Falkland Steelyard, at the price of	2 0 0
Carried Forward,	£470 0 0

Brought forward,	£470 0 0
3. 25 shares of the Strathmiglo Gas Company, at the price of	50 0 0
4. 80 shares of the Auchtermuchty Gas Company, at the price of	160 0 0
5. 60 shares of the Dunshalt Gas Company, at the price of	120 0 0
In all	£800 0 0

There were no gas company shares purchased by Col. Bruce for the price of £300. By a codicil to his settlement, quoted in the fourth article of the case, Col. Bruce, after leaving to his eldest son the whole stocking on the home farm of Falkland, went on "as also all the gas company shares that were lately bought by me from Mrs T. Bruce's Trustees for £300." The questions put to the Court were—"Is the said Andrew Hamilton Tyndall Bruce entitled, in virtue of the bequest quoted in the fourth article hereof, to all or any of the shares mentioned in the second article hereof; or is the legacy above mentioned void from uncertainty?"

Cases cited—*Oxenden*, 3 Taunt. 147; *Stone*, see *Wigram*, 27; *Miller*, 8 Bing. 244; *Morrell*, 4 Exch. R. 604; *Donald's Trustees*, 2 Macph. 922 Taylor on Evidence, 2, §§ 1104, 1108; *Dickson*, 1, §§ 208, 211; *Broun's Legal Maxims*, 629, 643.

At advising—

LORD JUSTICE-CLERK—I have no doubt whatever in this case. The bequest is of shares which the testator had lately bought from Mrs Bruce's Trustees for £300. In order to construe this bequest we must of course inquire into the nature of the transaction with Mrs Bruce's Trustees. There can be no question as to the admissibility of evidence to this effect. On looking into this transaction we find no shares bought for £300, but certain shares bought for £800, of which all were gas companies' shares except two, which were shares in a steelyard. These latter shares are not mentioned in the legacy, and they cannot be held as included in the bequest. The price of the other shares amounted to £788, and unquestionably there is an error in describing them as bought for £300. The question is, does this error vitiate the legacy, or do the words restrict the bequest to the value of £300? I think it is sufficiently clear from the words used, along with what we know of the nature of the transaction, that the whole shares were meant to be bequeathed in so far as they were gas shares. It is clear that the testator did not refer to any specific shares bought for the price of £300, for there were none such. He bequeaths "all his gas companies' shares," limited only by his purchase from Mrs Bruce's Trustees. The subject of the legacy being thus described with sufficient accuracy, the additional mention of the sum for which they were bought is not essential, and the error in the figure does not vitiate the bequest. I read these words as being merely *falsa demonstratio*, not touching the essence of the bequest, and not intended to be taxative of its amount.

The other Judges concurred.

The Court answered the question to the effect that the said A. H. Bruce was entitled to all the shares mentioned so far as they were gas shares.

Counsel for Colonel Bruce's Trustees—Moncreiff and Watson. Agents—M'Ewan & Carment, W.S. Counsel for Mr Bruce—Lee and Low. Agents—W. & J. Cook, W.S.