

LORD YOUNG and LORD CRAIGHILL were absent.

The Court refused the rule.

Counsel for the Pursuer—A. S. D. Thomson.
Agent—Wm. Officer, S.S.C.

Counsel for the Defenders—Darling. Agents
—E. A. & F. Hunter & Company, W.S.

Saturday, June 9.

SECOND DIVISION.

THOMSON AND OTHERS, PETITIONERS.

Trust—Nobile Officium—Allowance to Children for Maintenance and Education.

A trustor died leaving a trust-deed in which he directed his trustees by the *fifth* purpose to apply the free yearly revenue of his estate for the benefit of the young among the lawful descendants of his father, for obtaining for them such a good and sound education as would enable them to earn a livelihood for themselves, limiting the sum for each to £20 a-year, and making it payable only while in the judgment of the trustees it was necessary. In the *sixth* and *seventh* purposes he directed the yearly surplus remaining over to be accumulated for twenty-one years, when it was to be divided among his brother and sisters, and their families. A granddaughter of the trustor's father, a widow in poor circumstances, with six children, the two eldest of whom were 16 and 14 respectively, applied to the trustees for help, and they offered to allow her 12s. 6d. a-week for the whole family, and to pay the school fees of the four youngest. The mother and children then presented a petition to the Court craving an annual allowance, and averred that the trustees had administered the revenue so as to divert it from the *fifth* to the *sixth* and *seventh* purposes, in which they were personally interested, and had acted contrary to the trustor's directions in refusing to make a reasonable allowance. The Court being satisfied that there was ample revenue at the disposal of the trustees, fixed the rate of allowance for each child at £10 a year, reserving to either party to apply to the Court at any future time to alter the allowance.

The late William Davidson of Newhall executed a trust-disposition and deed of settlement on 21st May 1860, by which he conveyed certain lands to trustees for the following purposes—*"Fifth*, that the trustees shall hold the said estates, and apply the free yearly revenue arising from the same, or such portion thereof as may be necessary, as after mentioned, for the benefit of the lawful descendants of my father the deceased Alexander Davidson, merchant, Auchtilair, either according to any minute, letter of instructions, writing, or memorandum which I may leave for their government, in so far as such minute, letter of instructions, writing, or memorandum can be legally or practically carried into effect; and failing such instructions, I hereby direct and appoint my said trustees to apply the

said revenue for preserving the aged and infirm among the descendants of my said father from want, or from the necessity of applying for public relief, and for obtaining for the young among the said descendants, both boys and girls, such a good, sound, plain, and useful education as will enable them to earn a livelihood for themselves—it being my desire that their religious education shall be carefully attended to, and that they shall be brought up in the principles of the Free Church of Scotland, with power also to my said trustees to maintain the young among the said descendants, either in family with their parents or otherwise, while at their education, and also during such time as they or any of them may be apprenticed by my said trustees to business, which my said trustees are hereby empowered to do; and I hereby declare that my said trustees shall not be entitled to apply any sum beyond twenty pounds sterling per annum for the benefit or relief of any one, either young or old, of said descendants, and that only while, in the judgment of my said trustees, he or she stands in need of it in supplement of his or her own exertions. *Sixth*, that they shall, in the event of the free yearly revenue being more than sufficient for the above purposes, accumulate whatever yearly surplus may remain, for the term of twenty-one years from the time of my death, or such other period as can legally be done according to the law of Scotland, and invest the same in heritable securities in Scotland, or in railway debentures, until an opportunity shall occur of purchasing land in Scotland, which they are hereby directed to do as soon as possible. *Seventh*, that they shall, after the expiry of the legal period during which the said revenue can be accumulated, divide the free yearly surplus thereof into four equal shares or parts, to be paid *per stirpes* to my brother John Davidson, and to my sisters Janet Davidson or King, relict of Sylvester King, Lambhillock, Kinaldie; Helen Davidson or Ferguson, spouse of William Ferguson, Backmoss, Auchnagatt; and Agnes Davidson or Anderson, spouse of James Anderson, schoolmaster, Clochcan, and their families, the legal representatives of each or all of them dying taking the share or shares that would have fallen to their deceased ancestors, share and share alike; and if my said brother John, or sisters Janet, Helen, or Agnes, die without legal issue, or if any of their families at any time become extinct, the said revenue shall be divided among the survivors, or survivor, or their families, equally, *per stirpes* as aforesaid; and further declaring that in the event of the whole of the descendants of my said brother John, and of my said sisters Janet, Helen, and Agnes, dying out, then and in that case my trustees shall, from year to year, divide the free yearly revenue, or surplus revenue, among charitable, educational, or religious institutions or societies, in such proportions and in such sums as they shall fix and determine."

Mr Davidson died in December 1860, and his estate came to be administered by his trustees, who, with the exception of one of their number, had a personal interest in any surplus revenue under the *sixth* and *seventh* purposes of the trust-deed.

On 25th November 1887 the trustees received an application from Mrs Jane Davidson or Thomson, a granddaughter of the trustor's father,

in which she stated she was a widow in very poor circumstances, and unable to provide for the education of her children, of whom there were six—Jane aged sixteen, Sarah fourteen, James eleven, Elizabeth nine, Barbara seven, and Martha three years respectively. She asked for assistance out of the trust funds. The trustees offered a slump sum of 7s. 6d. a-week for the whole family, and to pay school fees for the younger children and allow them shoes. After further correspondence they offered to increase the allowance to 12s. 6d. a-week and to pay Mrs Thomson's past due rent, amounting to about £6.

Conceiving that these allowances were inadequate, Mrs Thomson and her children presented this application to the Court craving their Lordships to fix allowances to the children respectively at £15 per annum for Jane and Sarah, £12 per annum for James, Elizabeth, and Barbara, and £5 per annum for Martha, or to fix such other allowances as their Lordships might think reasonable, reserving to them right to apply to the Court for alteration in the event of any change of circumstances requiring or justifying such alteration.

The petition set forth that the capital of the trust was believed to amount to over £20,000, and to yield a free annual revenue of about £600. The whole of this was, except so much as was required to meet one annuity of £20, available for the fifth and main purpose of the trust-deed. As regards the children, Sarah was engaged at work in a confection manufactory, and earned 6s. a-week at ten hours a day. Jane had no employment, but assisted her mother. They had both passed the fifth standard, but had been withdrawn from school owing to their parent's pecuniary inability to continue them there. They were desirous to obtain a good, sound, plain, useful education to make them eligible for instruction as teachers, or in the post office. The petitioners averred that the allowance offered by the trustees was wholly inadequate to the wants of the children, and that the trustees had not exercised a sound and reasonable judgment in giving the allowance, but were administering the revenue so as to divert it from the fifth to the sixth and seventh purposes, in which they were personally interested. The petitioners further stated that they had acted contrary to the directions of the trust in the fifth purpose, both in refusing reasonable allowances and in excluding the two eldest children from the benefit of the said purpose.

In their answers to the petition the trustees admitted that they had a personal interest in the surplus revenue under the seventh purpose of the trust. They, however, denied that they had endeavoured to divert the revenue from the fifth to the sixth and seventh purposes. They had endeavoured to do their best to carry out the intentions of the trust. They had all along conceded that the four youngest children were proper subjects for assistance under the fifth purpose, but they considered that the two eldest girls did not require assistance. They further submitted that the trust had constituted them to be the sole judges of the question whether an individual claiming assistance under the fifth purpose really stood in need of it; and if so, what amount should be allowed him in supple-

ment of his own exertions, and that nothing had been stated in the petition to justify any interference with their discretion.

The Court ordered the trustees to lodge in process an abstract of the division and application of the revenue for the years 1883-87. The following state was accordingly lodged:—

	Under 3d Purpose.	Under 5th Purpose.	Under 7th Purpose.	Total Revenue Divided.
Year ending 30th June 1883	£20 0 0	£29 3 6	£272 13 3	£322 19
Year ending 30th June 1884	20 0 0	73 4 0	616 17 6	710 16
Year ending 30th June 1885	20 0 0	33 0 0	519 12 8	572 12 8
Year ending 30th June 1886	20 0 0	43 0 0	535 17 7	598 17 7
Year ending 30th June 1887	20 0 0	48 9 0	488 12 6	557 16

The petitioners, in submitting that the facts stated in the petition disclosed a case for interference by the Court, cited *Baird v. Baird's Trustees*, February 24, 1872, 10 Macph. 482.

The trustees in reply cited the case of *Douglas v. Douglas' Trustees*, July 6, 1872, 10 Macph. 943, in support of the argument that the petition did not disclose anything like the gross dereliction or misconception of duty which alone entitled the Court to interfere with the discretion vested in the trustees. *Baird's* case really turned on the fact that the trust had not fixed an allowance himself, and had not provided any means for fixing it.

At advising—

LORD JUSTICE-CLERK—I am not of opinion that in the ordinary case it is desirable for the Court to interfere with the discretion of trustees if they are acting reasonably in the discharge of the duties given them by the trust. Such questions are always delicate, and in the general case I think trustees are probably better judges than this Court is likely to be. Here, however, I feel perfectly satisfied that the trustees are not acting reasonably in the discharge of their powers. I do not suppose they have any personal views in the matter, although they certainly have a personal interest. I do think, however, that they have dealt harshly and misjudged the case of these petitioners, and I propose that we in the meantime allow them a sum of £60 from the revenue.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG and LORD CRAIGHILL were absent.

The Court pronounced this interlocutor:—

“Fix the rate of allowance to be made by the said trustees at £10 sterling per annum for each of the six children of the petitioner mentioned in the petition, to be paid to their said mother, and that monthly from and after the first day of December 1887, and decern; reserving to the parties, or either of them, to apply to the Court at any future time to alter said allowances: Find the petitioners entitled to expenses.”

Counsel for the Petitioners—Kennedy. Agent—J. D. Macaulay, S.S.C.

Counsel for the Respondents—W. Campbell. Agents—Skene, Edwards, & Bilton, W.S.

Thursday, June 16, 1887.

OUTER HOUSE.

[Lord Trayner, Ordinary.

GRIERSON, PETITIONER.

Entail—Restriction of Widow's Annuity—Aberdeen Act (5 Geo. IV. cap. 87), sec. 1—Free Rental.

In a petition by an heir of entail to restrict the provisions granted by the preceding heir in favour of his widow to a third of the free rental of the estate under sec. 1 of the Aberdeen Act, held that the petitioner in estimating the gross rental was not bound to include the rent of the grass park adjoining the mansion-house, although actually let from year to year for grazing; that he was not entitled to deduct from the gross rental the expenses of maintaining the farm buildings; of paying a factor to collect the rents and manage the estate; nor the annual amount of a rent charge, of which the last instalment had been paid off immediately before the preceding heir's death; but that he was entitled to deduct the interest of a bond for improvement expenditure charged upon the estate, although no interest had been demanded or paid thereon during the granter's lifetime.

Sir Alexander Davidson Grierson, Baronet, heir of entail in possession of the entailed lands and estate of Rockhall and others in the county of Dumfries, presented a petition to have the provisions granted under the authority of the Aberdeen Act (5 Geo. IV. cap. 87), sec. 1, by Sir A. W. Grierson of Lag and Rockhall, Bart., the last heir of entail in possession, who died on 27th December 1879, in favour of his widow, restricted in terms of the Act to one-third of the free rental of the estate at the date of the granter's death. The sum provided to his predecessor's widow was £950.

The petitioner averred that the gross rental at his predecessor's death was £3343, 17s. 9d., and that from this there fell to be deducted £1031, 11s., leaving as free rental £2313, 6s. 9d., and as the maximum statutory provision £770, 15s. 7d., to which sum he sought to have the provision restricted.

Lady Grierson, the annuitant, lodged answers to the petition, in which she stated that the gross rental was understated, and that several of the deductions were unwarranted by the statute.

The objections taken to the rental were three in number—(1) The rent of £39 actually received for the grass park adjoining the mansion-house, and let for grazing, had been omitted. (2) The rent of another grass park, amounting to £15, had been omitted, and was not (as contended for by the petitioner) included in the rent of the shootings. (3) The shootings had been undervalued by £50.

The objections taken to the deductions were as follows—(1) General maintenance of farm buildings, £276, 6s. 9d.; (2) expenses of management, factor's charges for collection, &c., £57, 4s.; (3) the last instalment of a drainage rent charge paid off two months before Sir A. W. Grierson's death, £55, 12s. 10d.; (4) interest on £2776,

15s. 5d. charged upon the estate by two improvement bonds, £111, 1s. 3d.

On 20th July 1886 the Lord Ordinary (TRAYNER) remitted to Mr H. B. Dewar, S.S.C., to enquire into the circumstances set forth in the petition, and to report, with power to him to convene parties and call for documents and explanations before answer.

The substance of Mr. Dewar's report was as follows:—"I. *Gross rental*—(1) That the grass park adjoining the mansion-house had since 1873 been temporarily fenced and let from year to year for grazing to the tenant of Boghead farm at a rent of £39; that it lay in front of and upon two sides of the mansion-house, and was traversed by the carriage drive, and shaded with trees; that it was 10 acres in extent, and of much the same nature as the usual park or lawn in front of a gentleman's country seat, and that he was of opinion that the case of *Leith v. Leith*, June 10, 1862, 24 D. 1059, relied on by the petitioner, did not apply, as it dealt with 'policies', and that the £39 should be added to the gross rental. (2) That the shootings were not let at the date of the late Baronet's death, and therefore this grass park was not included in them; that it was entered in the valuation roll of that year (1879) at £15, and that in his opinion this sum should also be added to the gross rental. (3) That when the house, unfurnished, and shootings were let five years prior to the late Baronet's death the rent was £183, that £83 might fairly be taken as the rent of the house; and that £100 or £50 more than the amount stated by the petitioner might be taken as the fair value of the shootings, especially as that was the sum reached by allowing 1s. an acre for 2000 acres—the extent of these shootings—which the reporter was informed was a fair valuation. II. *Deductions from the gross rental*

—(1) That in his opinion, looking to the provisions of the Aberdeen Act, sec. 1, and to the cases of *Cochrane v. Cochrane*, November 25, 1846, 9 D. 173, and *Dunbar v. Dunbar*, December 7, 1872, 11 Macph. 200, the petitioner was not entitled to deduct the expenses of general maintenance. (2) That the same opinion applied to the sum of £57, 4s. deducted for factor's charges for collecting rents and management (cases already cited, and *Macpherson v. Macpherson*, May 24, 1839, 1 D. 794). (3) That a sum of £55, 12s. 10d. was included in the deductions under the name of drainage interest or rent charge, which, in his opinion, looking to the history of this charge, should not have been deducted. In questions under the Aberdeen Act the whole annual rent charge instalment—both capital and interest included in the instalment—fell to be deducted in estimating the free rental—*Lord Saltoun, Petitioner*, January 18, 1887, 24 S.L.R. 352. But this sum, paid 10th October 1879—two months before Sir A. W. Grierson's death—was the final instalment of capital and interest due under an advance of £856 made in the year 1857, and by its payment the rent charge was extinguished, so that at Sir A. W. Grierson's death no debt whatever existed in respect of this drainage loan. The petitioner relied upon the fact that this instalment was paid during the currency of the year of the death, and upon the case of *Christie v. Christie*, December 16, 1878, 6 R. 301. In the reporter's opinion that case