their record or pleas. Their plea is that they are exempt from liability by virtue of the statutes referred to by them; they put forward no other claim to exemption. Now, have the pursuers established the right to exemption which they claim? The exemption claimed is not conferred by the Act of 1897 in express terms; the pursuers maintain that that is done by implication. Upon this I observe that where by statute a rate or tax is imposed on "all lands and heritages" without any exception, it is difficult to infer that any exemption was intended, and this all the more from the fact that where exemption from a statutory burden is intended to be given it is almost always, certainly generally, expressed in the statute by which the burden is created or imposed. I do not say that exemption may not in any case be conferred by implication, but the implication must be clear and precise. Exemption by implication is not to be readily inferred —the presumption is rather against it.

The pursuers' contention I understand is this—By the Act of 1897 it is provided (sec. 136) that the rate therein authorised is to be "assessed, levied, and recovered in like manner and under the like powers as" the General Improvement Rate under the Burgh Police Act 1892, "or where there is no such rate, by a rate levied" as if there was. But no General Improvement Rate is levied in Greenock, and if there was the pursuers would be exempt from it by virtue of section 373 of the Act of 1892 and the provisions of the Local Act of 1877. There being therefore no General Improvement Rate, or rate corresponding thereto, leviable from the pursuers, a rate which is to be "assessed, levied, and recovered *in like manner and under the same powers*" is one from which they are exempt, because there is no "manner" prescribed by which it can be imposed or levied, and no "power" to impose, levy or recover. The Lord Ordinary has dealt with this argument very fully, and I adopt his views without repeating them. I assume that the pursuers are not, and cannot be made, liable for a General Improvement Rate or a corresponding rate, and are entitled in that respect to any exemption conferred by the 373rd section of the Act of 1892, but assuming this and giving the pursuers the fullest benefit which the 373rd section of the Act of 1892 confers, the question before us is not touched. For the exemptions conferred by the clause are only from assessments authorised by that Act itself, and the Public Health Assessment imposed in 1897 (five years later) is not, and could not be, among them. Again, to say that the Public Health Assessment cannot be imposed, levied, or recovered where there is no General Improvement Assessment, because then there is prescribed no manner in which, or power in respect of which, it can be imposed, levied, or recovered, is leaving out of view one-half of the 136th section of the Act of 1897. It provides for the case where no General Improvement Assessment exists, in which case the Public Health Rate is to be imposed, levied, and recovered as if a General Improvement Assessment did exist. The power to impose, levy, and recover the Public Health Assessment is given by the first part of section 136 of the Act of 1897; the latter part of the section refers merely to the mode in which this is to be done, the machinery by which the power is to be made effectual. An argument similar to that now urged by the pursuers was repelled in the case of *Hogg*, 7 R. 986.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers —Salvesen, K.C. — Macmillan. Agent — W. B. Rainnie, S.S.C.

Counsel for the Defenders and Respondents—Dean of Faculty (Asher, K.C.)— M'Lennan. Agents—Cumming & Duff, S.S.C.

Saturday, June 25.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

MURDOCH *v*, BRASS AND OTHERS.

Succession — Will — Uncertainty — Bequest "for the Love I have for A" — Object of Bequest not Named.

A testatrix by holograph will provided for the disposal of her estate as follows:—"I, M., . . . for the love that I have for my husband J., will bequeath and leave everything which belongs to me or which may belong to me at some future time." Certain specific bequests followed. *Held* (*reversing* judgment of Lord Kincairney—*diss.* Lord Young) that the general bequest was not effectual, in respect that the object thereof was not named, and that it was not admissible to supply the want by the conjecture that the husband of the testatrix was the person she intended to benefit.

This was an action at the instance of John Murdoch, retired master mariner, Summerbank, Dalbeattie, against John Brass, 18 Wisbeach Street, Balmain, Sydney, New South Wales, and his factor and commissioner and others, in which the pursuer sought to have it found and declared — "(*First*) That the last will and testament, dated 31st March 1891, executed by the now deceased Mrs Margaret Brass or Murdoch, the pursuer's wife, was valid and effectual; (*second*) that by the said last will and testament a valid and effectual bequest of the whole estate belonging to his wife at the date of her death, but under deduction of the special legacies therein mentioned, was made to the pursuer; (*third*) that the pursuer was entitled to take possession of the whole estate, property, and effects left by his said deceased wife."

The defenders were the heirs *ab intestato* of Mrs Murdoch and the special legatees under her will.

The pursuer averred—"(Cond. 2) By her said holograph last will or testament Mrs Murdoch provided for the disposal of her estate as follows:—'*Glenshalloch Place*, 198 *High Street, Dalbeattie*, 31/3/91.—I, Margaret Brass or Murdoch, being in my sound mind senses for the love I have for my husband John Murdoch will bequeath and leave everything which belongs to me or may belong to me at some future time. only bed & beding jewellery, body cloths. Napry &c to be equely divided amongest my brother children at the event of my death or if my mother outlives me to be hers her lifetime. Only what I have got from my husband John Murdoch to be equely divided between his two youngest daughters Bella and Lizzie. Alexr the youngest son to get the walnut writting tabel at the event of his father death if he outlives him if not to be divided amongest my said brother's children, for my brothers kindness towards me Mrs David Newall to get the chose of either of my white counterpanes. for her great kindness while I was sick. My brother's David & William Brass to see that everything is rightly done. This I have made for the love I have for all those mentioned in this will on the 31st day of March Eighteen hundred and ninety-one. MARGARET BRASS or MURDOCH. *Witness*, David Newall, Glenshalloch Place, Dalbeattie, 31st March 1891, *Witness*, Alex. Young, Glenshalloch Place, Dalbeattie, March 31st 1891."

The pursuer pleaded—"(1) The last will and testament of the deceased Mrs Murdoch being valid and effectual according to its terms, the pursuer is entitled to decree in terms of the first conclusion of the summons. (2) On a sound construction of the said last will and testament, a valid and effectual bequest of the whole estate of Mrs Murdoch, subject to the specific legacies therein mentioned, was made to the pursuer, and he is entitled to decree in terms of the remaining conclusions of the summons. (3) No relevant defence."

The defenders pleaded—"(2) The said holograph will and testament of the deceased Mrs Murdoch being void from uncertainty *quoad* the disposal of her estate, with the exception of the special bequests therein made, decree of declarator should be refused with expenses. (3) No valid or effectual bequest having been made therein to the pursuer, the action should be dismissed with expenses. (4) *Separatim*, the words of bequest in said will, even if an object be supplied from the context, are insufficient to convey heritable estate."

On 19th March 1904 the Lord Ordinary pronounced an interlocutor in the following terms:—"Finds that Mrs Murdoch's will referred to imports a bequest to the pursuer of all her effects, excepting the special legacies afterwards expressed therein; repels the second, third and fourth pleas in law for the defenders."

Opinion.—"This is an action as to the validity and effect of the holograph will of Mrs Murdoch, who died without issue on 29th March 1892. The pursuer of the action is John Murdoch, Mrs Murdoch's husband, and the defender is David Brass, a brother of Mrs Murdoch, who states that he is her heir. A minute has been lodged, from which it appears that Mrs Murdoch's estate consisted mainly of one-fourth part of the estate of her father David Brass, who died in 1887, and whose estate is valued in the minute at £800 of heritage and £184, 3s. 3d. of moveables. Mrs Murdoch possessed, besides, certain furniture, plenishing, and trinkets of slight value. The bulk of her property was derived from her father.

"The will is not long, but it is necessary to quote it at length.—[*His Lordship here quoted the will ut supra*].

"It may be worth while to notice that the will is well written and little corrected, and suggests the idea that it was copied from a draft. Although the will is holograph, the signature is attested by two witnessess. The peculiarity of the will which has raised this question is this, that after the first and general words of bequest no legatee is named. The questions are (1) can the name of the legatee be supplied by inference or implication? and (2) if so, what name shall be supplied?

"I think there is no doubt that the document is a valid will to some extent. The bequest of the bed and bedding, the walnut table, and the counterpanes seem to be undoubtedly good bequests, and give rise to no question either about the legatees or the subjects. They are legacies the validity of which has not been questioned. So also the legacy of 'what I have got from my husband' is apparently good, although there may be some uncertainty as to the subject. The whole question is about the first four lines of the will, in which the testatrix says that for the love she had for her husband she left everything which belonged to her or might belong to her at some future time. The bequest ends there. What follow in the will seem to me to be separate legacies, complete in themselves, to which I have already adverted. Each of these subordinate legacies contains sufficient bequeathing words. One way of looking at the deed may be this, that the bequest of residue is at the beginning instead of the end, and I take it that that first clause, which may be called a residuary clause misplaced, has no dependence on the legacies which follow. I think the case is much the same as if the will had consisted solely of the first clause.

"Looking at it in that way, there is a clause expressed in testamentary language in which there is a subject of bequest distinctly expressed and a reason for making the bequest—love for her husband also distinctly expressed. There is no blank left. In these circumstances can the legatee be supplied? I *think* the legatee can be supplied. There is a clearly expressed intention to bequeath, and then there ought to follow the name of the legatee. I think it impossible to doubt that the truster either thought she had

sufficiently indicated the legatee or had omitted his name or the words 'to him' by mere mistake, very possibly in copying from a draft. See *Baylis & Chant* v. *Attorney-General*, 1741, 2 Atk. 239; *Yates* v. *Thomson*, 1835, 3 Clark and Fin. 544.

"It was argued that a legatee could not be supplied, and that there was no case in the books in which that had been done. I do not know that there is any such case. But there are many cases in which inferences which are equivalent have been drawn. Thus the subject of a bequest has in several cases been arrived at by implication, as in *Forbes* v. *Forbes*, January 13, 1893, 20 R. 248, 30 S.L.R. 250. But what may be more to the purpose, there have been several cases in which legacies have been sustained where the legatees were wrongly named, as in *Wedderspoon* v. *Thomson's Trustees*, December 15, 1824, 3 S. 396, where a legacy bequeathed to 'Janet Keiller or Williamson' was paid to Agnes Keiller or Wotherspoon, and *Forbes*, *supra*. In these cases the Court practically struck out the legatee named and added the name of the legatee truly intended. I think the principle of these cases will cover this case where no name of a legatee is given.

"Lord M'Laren remarks that it is scarcely conceivable that a testator should make a bequest blank in the name of a legatee (Wills, vol. i., 640). That remark would warrant the argument that in the apprehension of the truster this bequest was not blank in the name of the legatee, but that he was sufficiently indicated.

"I am of opinion that it is not of necessity incompetent to supply the name of a legatee where it had been omitted by mistake, or because the testatrix had thought that the legatee was sufficiently expressed.

"If that be so, the only question is, who was the legatee so indicated, and I think there can be no doubt at all that it was the husband of the testatrix, the pursuer. There was no one else whom it could be. Nobody was or could be suggested. The only alternative suggested was intestacy, a construction which cannot be adopted without necessity. I am of opinion that it is sufficiently shown by the deed itself and without going beyond it, that the testatrix meant to leave her effects, and did effectually leave her effects, to her husband, the special legacies being excepted from that bequest.

"The question as to the validity of the will was the only question fully argued, and I understood the parties to wish a judgment on that point.

"There are, however, two other pleas for the defenders which were not, I understood, intended to be fully argued—the fifth and sixth—and I must leave them over at present."

The defenders reclaimed, and argued—The Lord Ordinary had dealt with the case as though it was one of *falsa demonstratio;* there was no *demonstratio* at all, and therefore no bequest. The ambiguity in the present case was not such that the object of the bequest could be ascertained by implication; there was no object, and the Court could not supply one. The ambiguity was patent, and could not be cleared up—Taylor on Evidence, 1212.

Argued for the respondent—What the testatrix had done was to make her husband her residuary legatee. The residuary clause was elliptical in form, but the implication that the pursuer was the intended beneficiary could not be avoided *Parker* v. *Tootal*, 1865, 11 Clark (H. L. Cas.) 143; *Grant* v. *Grant*, March 1, 1851, 13 D. 805; Jarman on Wills, i. 493.

At advising—

LORD JUSTICE-CLERK—The pursuer in this case asks declarator that by a document left by his wife a valid and effectual bequest of the whole estate belonging to her was made to him, under deduction only of certain specific legacies. The words of the alleged bequest are—"I, Margaret Brass or Murdoch, being in my sound senses (*or* mind), for the love I have for my husband John Murdoch, will, bequeath, and leave everything which belongs to me or may belong to me at some future time," and then follow certain bequests, each preceded by the word "only." I have found it impossible to come to the conclusion that there is here any valid bequest in favour of the pursuer such as he asks shall be declared. I find in the words used no setting forth of a gift to a legatee. I am not aware that there is any case in which where the words of gift were not applied to a legatee named or identified by description as the object of the gift, such an omission has been supplied, and this seems also to be the view of the Lord Ordinary. But he is of opinion that it may be done, founding upon the fact that inferences have been made as regards the subjects of bequests and as to the true legatees where there has been a mistake in the name. I cannot agree with him in holding that such cases give warrant for supplying the absence of statement of the object of a bequest. The cases are not, in my view, at all analogous. It is a very different thing to get at the subject of a bequest by implication from supplying an object, a person to whom the gift is made. That cannot be a matter of implication if it is not expressed at all in any form, as I do not think it is expressed here. It may be true that it is not an unreasonable guess that if the testatrix had expressed the person to whom she proposed to bequeath that person would have been the pursuer. That may have been what she wished to do, but I cannot find in the words that she does do it. It is at best a case of *quod voluit non fecit*. As regards those cases where there has been an erroneous statement of name, the question was not one of finding a legatee where none had been designated, but only of identifying the legatee who was named but where there had been a *falsa demonstratio*. Here there is no *demonstratio*. We cannot supply it. I am unable to see that such cases are in any way analogous to the present, where there are only two branches of the alleged bequest—a statement that the granter proposes to do something for the love she

bears to A B, and a statement that she wills, bequeaths, &c., without naming any person to whom she makes the gift. A bequest may be made to one person in respect of the love, favour, and affection entertained for another person, and I cannot hold that the declaration of love to a person identifies and fixes that person as the object of a gift where there is no other expression of gift to that person.

I therefore think that the judgment of the Lord Ordinary ought to be recalled.

LORD YOUNG—I concur in the judgment of the Lord Ordinary and in the reasons for it expressed in his opinion. It is not disputed or disputable that the will in question contains valid words of bequest applicable to everything which belonged to the testatrix at her death. Nor is the operative validity of the bequest disputed with respect to the bed and bedding, body clothes, walnut table, and counterpanes. The validity of the will with respect to the bulk of the estate left by the testatrix, which though not large was considerable, is disputed on the ground that the will does not specify or sufficiently indicate any legatee except only with respect to the bed and bedding, body clothes, walnut table and counterpanes.

I agree with the Lord Ordinary that the testatrix when she bequeathed everything of which she should die possessed had in her mind not only the legatees to whom she intended to leave "only" the trifling things specified, but a legatee to whom it was her intention that the bulk of her estate should go under the bequest which certainly and admittedly comprehended it. The question then comes to be — Is the language of the will, and especially that of the bequest, such as to give a reader of ordinary intelligence reasonable assurance of what the testatrix intended in the matter. The Lord Ordinary thinks it is, and therefore by his interlocutor finds that the will imports a bequest to the pursuer of all the effects of the testatrix "excepting the special legacies."

It is superfluous to say that technical language is not necessary to constitute a legacy. It is sufficient that the testator's intention to give it, and of course to whom, is intelligibly expressed. Here the only doubt suggested regards the—to whom—and that although the testatrix's motive for making the bequest, which is very clearly expressed, leaves no room whatever to doubt who was intended by her to take under it.

LORD TRAYNER—I am unable to concur in the judgment of the Lord Ordinary in so far as he finds that the will under consideration confers any right as a legatee upon the pursuer. The Lord Ordinary thinks that the name of a legatee may be supplied by inference or implication. I cannot agree with that. In my opinion there can be no valid or effectual legacy unless the legatee be named or so designated as to leave no room for doubt or speculation as to the person intended to be benefitted, and I find no such nomination or designation here. The testatrix in this case intended no doubt to benefit somebody, but she does not say whom, and the Court cannot say it for her, for that would be writing her will, not construing it. It is said that the moving cause—her love, favour, and affection for her husband—leads to the conclusion, indeed the necessary conclusion (for nothing short of that will do) that the husband was the legatee intended. But the same cause might just as well have induced the testatrix to bestow her bounty on her husband's son. There is probability, no doubt, that the legacy was intended for the husband, but that in my opinion is far from being enough. The one probability may be supposed to be greater than another, but it is not exclusive of that other. Lord M'Laren (Wills and Succession, i. 318) says that "to the constitution of a testamentary disposition or bequest three elements must concur on a subject of bequest, an object or person to whom the subject is given, and words of disposition. . . . A will is said to fail or be void for uncertainty where it is absolutely defective in any of these primary elements." I concur on that statement of the law, and applying it here hold the will before us, in so far as the pursuer's claim is concerned, to be void and ineffectual, in respect no person is named or designated as the legatee.

The cases referred to by the Lord Ordinary where a mistake in the name or designation of a legatee was said not to invalidate a legacy do not appear to me to give any aid in deciding the question here raised. For this is not a case of *falsa demonstratio*, but a case of no *demonstratio*. In the class of cases referred to the Court were able to correct a mistake from a consideration of what the testator had said although erroneously. Here the testatrix has said nothing, but we are asked simply to fill up a blank. I am of opinion therefore that the defender should be assoilzied from the second and third conclusions of the summons, and the action dismissed as regards the first, the first conclusion being one in which the pursuer has no interest if the others are disallowed.

LORD MONCREIFF was absent.

The Court recalled the interlocutor reclaimed against, repelled the first plea-in-law for the pursuer, and dismissed the action.

Counsel for the Pursuer and Respondent —D. Anderson. Agent — Henry Bower, S.S.C.

Counsel for the Defenders and Reclaimers —Clyde, K.C.—R. S. Brown. Agents—Patrick & James, S.S.C.