

to the usual orders for expediting procedure. I would propose, therefore, that Mr Heddle should be ordained to print and box within ten days, under certification that if he fails to do so the appeal will be dismissed. I see no reason for dispensing with the ordinary rules of this Court that appeals should be printed.

I am not prepared to grant the prayer of the note *quoad* finding caution, for I suspend my views on that matter till the process is before me. This is a petition by a bankrupt for his own discharge, and that is in a different position from a litigation by him about other matters. I do not think that a bankrupt applying for his discharge should be hampered by being ordered by the Court to find caution.

I am therefore for refusing the second part of the prayer of the note.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"The Lords . . . ordain the appellant to print and box to the Court within ten days from this date the note of appeal, petition, interlocutors, and such productions as he intends to found upon in support of the appeal, under certification that if the above order is not obtempered the appeal will be dismissed: *Quoad ultra* refuse the prayer of the said note."

Counsel for Melrose-Drover, Limited—
Munro. Agents—Snody & Asher, S.S.C.—
James Heddle, Appellant.

Wednesday, June 28.

SECOND DIVISION.

MARTIN AND OTHERS (BLYTH'S TRUSTEES) v. UNIVERSITY OF ST ANDREWS.

Charitable Trust—University—Bursary—Bursary to Colleges Named—Subsequent Affiliation of Another College—Extension—Truster's Intention.

A testatrix, who died in 1880, by a trust-disposition and settlement, made in 1878, left property "for the purpose of establishing one or more bursaries in either one or other of the colleges of St Andrews" as her trustees might determine. In 1880 there were two colleges in St Andrews. In 1897 the University College of Dundee was affiliated to and became part of the University of St Andrews.

Held that, on a just construction of the settlement, the testatrix's bequest was conceived in favour only of the colleges of St Andrews existing at the date of her death, and could not be extended by the trustees to the University College of Dundee.

Charitable Trust—University—Bursary—Female Students.

A testatrix by her trust-disposition and settlement conveyed property to trustees for the establishment of bursaries in certain colleges. At the date of her death the only students to whom the colleges were open were male students. Subsequently the colleges were opened to females.

Held that the trustees were entitled to admit females to the benefits of the bursaries, there being nothing in the trust-deed to indicate the testatrix's intention to confine them to males.

On 9th February 1880 Mrs Agnes Carmichael or Blyth, residing at Castle Garden, Crail, died leaving a trust-disposition and settlement dated 14th June 1878, by which she conveyed her whole estate to her brother David Carmichael, engineer, Dundee, and appointed him, subject to the legacies and provisions therein made, to be her sole and universal legatory.

By the third purpose of her settlement she gave the following directions—"Thirdly: For the purpose of establishing one or more bursaries in either one or other of the colleges of Saint Andrews as the trustees after named may determine, I direct the said David Carmichael as soon as conveniently may be after my death to sell, either by public roup or private bargain as he may think proper, the villa and grounds at Crail known by the name of Castle Garden, as the same are presently occupied by me, and to lay out and invest the proceeds, after deducting therefrom all expenses which may be incurred in connection with the realisation and division of my said means and estate, in name of himself and William Scott, solicitor, Dundee, and the survivor of them, as trustees or trustee, for the purposes after mentioned, and that on such reasonable security as they or he may think proper, and I appoint the said trustees or trustee, and such other trustee or trustees as may be assumed to continue said trust as after mentioned, to be the patrons or patron of said bursary or bursaries, and that the said David Carmichael and William Scott or survivor of them shall, as soon as conveniently may be after ascertaining the clear capital sum so to be laid out and invested, fix and determine the number of bursaries so to be established; and I further appoint that the said patrons or patron shall, so soon as convenient after determining the number of bursaries, and thereafter from time to time as often as a vacancy or vacancies may occur, nominate and present to the said bursaries a student for each qualified in manner after mentioned, which students so nominated and presented shall be entitled to the yearly produce of said sum so invested equally among them (under deduction of the expenses after mentioned), and that for such number of years, not exceeding four years, as the said David Carmichael and William Scott or the survivor of them may determine; and in nominating and presenting students as aforesaid I appoint

the said patrons or patron to prefer, in the first place, such as are of the kindred of my said late husband, and failing such, such as are of my own kindred; secondly, such as are of the name of Blyth; thirdly, such as are of the name of Carmichael; and failing students of the above kindred or name, then such as shall be found best qualified and most deserving of the same; and for the perpetuation of said bursaries I hereby direct the said David Carmichael and William Scott, or survivor of them, either to assume new trustees into said trust so as there shall always be three trustees in the management of said trust after the death of the survivor of the said David Carmichael and William Scott, and which trust shall be continued in all time coming by the assumption of new trustees, or, in the option of the said David Carmichael and William Scott or survivor of them, they may and are hereby empowered by such deed or writing as may be necessary to appoint that the said trust shall be perpetuated in all time coming after the death of the survivor of them in the persons of the Principal and Professors of the said College for the time under such regulations, in addition to those above specified, as the said David Carmichael and William Scott or survivor of them may consider judicious; and I authorise and empower the said trustees or trustee to pay and apply out of the produce of the said fund the necessary expenses attending the execution and management of the said trust, with power to appoint anyone of their own number to be factor or law-agent, and to allow him reasonable remuneration for his trouble: Declaring that the said bursary or bursaries shall in all time be denominated and known by the name of the 'Blyth Scholarship.'

The property was sold and a sum of £970 realised and invested, yielding an income of about £45 a-year.

On 12th April 1882 the trustees and patrons, by minute of that date, resolved as follows:—“(1st) To establish two bursaries of equal amount in terms of the trust-deed; (2nd) that each bursary be tenable for three years; (3rd) that students while holding the bursaries shall attend the United College of St Andrews; (4th) that one of the bursaries be open for competition this year, and the other next year; (5th) that the trustees and patrons reserve to themselves to decide from time to time when applications come before them how far, having regard to the terms of the trust-deed and to the qualifications of the applicants, preference is to be given to candidates who may be relatives of the founder or who may bear the name of Blyth or Carmichael; (6th) it was reserved for further consideration what subjects candidates should be examined upon, and when and where and by whom the examination should be conducted.”

By Ordinance No. 46 (St Andrews, No. 5—Regulations as to application of Parliamentary grants, as to salaries, and for the institution of a fee fund, and for other purposes) of the Commissioners under the Universities (Scotland) Act 1889, the University

College of Dundee was affiliated to and made to form part of the University of St Andrews, subject to the conditions set forth in the agreement set forth in Schedule I annexed to the said ordinance. The said scheduled agreement between the University of St Andrews and the University College of Dundee provided, *inter alia*, as follows:—(Clause 8)—“All the funds and estates at present belonging to the University of St Andrews as now existing, or to either of its present colleges, shall continue to be appropriated to University and college uses respectively in St Andrews, and all funds which are or shall be vested in or bequeathed to the said University, or to either of the said colleges, by any deed or writing dated on or before the 31st December 1890, shall, if bequeathed for specific purposes, be appropriated to the purposes for which they have been bequeathed, and if bequeathed without designation of a specific purpose, shall be devoted to the further endowment of the offices of the principals, professors, lecturers, and class assistants, and to other University or college uses in St Andrews, and all funds thereafter gifted or bequeathed to either of the colleges of the University of St Andrews, at St Andrews, shall also be devoted to the use of the college in St Andrews to which they are gifted or bequeathed.” Clause 10—“Subject to the provisions of the Universities (Scotland) Act 1889, the scholarships, fellowships, and bursaries now attached to the colleges and the University of St Andrews, shall continue to be tenable only by students studying at St Andrews, and the scholarships, fellowships, and bursaries existing at Dundee shall be tenable only by students studying there.” The said Ordinance No. 46, to which said agreement was scheduled, was dated 3rd February 1894, and was approved by Order in Council dated 15th January 1897, and came into force from and after the latter date.

At the date when the truster made her trust-disposition and settlement, and when the bursaries were instituted, the University classes were closed against women. The Universities (Scotland) Act 1889, section 14 (6), gave the executive Commissioners thereby appointed power to enable each University to admit women. The Commissioners by Ordinance No. 18 (General No. 9—Regulations for the Graduation of Women and their Instruction in the Universities) gave power to the University Court in each University to admit women to graduation and instruction. This ordinance was approved by Order in Council on 28th June 1892, and came into force in October 1892. The University Court of St Andrews having on 2nd April 1892 resolved to admit women to the ordinary classes of the University as soon as the last-mentioned ordinance should become law, women were for the first time admitted as students of St Andrews University at the beginning of the winter session in October 1892.

The Universities (Scotland) Act 1889, section 14 (1), limited the powers of the Commissioners in regulating bursaries, &c., to

those "which have taken effect for more than twenty-five years previously to the passing of this Act, or if given within less than twenty-five years are wholly or partially inoperative or dormant, or which they may be asked to revise and regulate by the Senatus Academicus and the founder of the trust conjointly with the approval of the University Court."

Section I (1) of Ordinance No. 58 (General No. 20—Regulations for Admitting Women to Bursaries, Scholarships, and Fellowships) of the Commissioners under the Universities (Scotland) Act 1889 empowered the University Court in each University to admit women to such number of open bursaries which had taken effect prior to the 30th day of August 1864 as the University Court might think fit. Section II provided—"Save as hereinbefore provided, women shall not be allowed to compete for or hold any bursary, scholarship, or fellowship which is not expressly open to competition by women in terms of the deed of foundation." The University Court of St Andrews had never exercised the power conferred on it by section I (1) of this ordinance.

On 18th May 1905 William Young Blyth Martin and others, the trustees and patrons, original and assumed, of the "Blyth Scholarship Fund," presented the present petition, in which they craved their Lordships "to authorise the petitioners and their successors in office in the administration of the Blyth Scholarship Fund to extend the benefits thereof (*first*) to students attending the University College of Dundee as well as the United College of St Salvator and St Leonard and the College of St Mary's, being colleges of the University of St Andrews, as the petitioners and their foresaids may determine from time to time, and (*second*) to female students attending one or other of the said colleges."

The petitioners in the narrative prefixed to their prayer stated, *inter alia*, that they were of opinion that the truster, who belonged to a family of engineers in Dundee, would have desired her bursary fund to be devoted to the encouragement of students of science and engineering, and indicated reasons for believing that the study of these subjects could be better prosecuted in the University College of Dundee than at either of the colleges in St Andrews. They also stated that in 1900 they had received several applications for the Blyth Scholarship for females, and submitted that the extension of the fund to women was not opposed to the intention of the truster and was in no way inconsistent with her settlement.

Answers were lodged by the University of St Andrews opposing the granting of the first branch of the prayer.

They did not oppose the admission of women to the benefit of the fund if the Court should be of opinion that it was consistent with the intention of the testator.

Argued for the petitioners—(1) On a fair construction of the trust-disposition and settlement, the University College of Dundee, which now formed part of the University of St Andrews, was entitled to share in

the benefits of the fund. Neither clause 8 nor 10 of Ordinance No. 46 was applicable. The bequest was made to and vested in the testamentary trustees, and never "belonged to" or was "bequeathed to" "or vested in" the University. Clause 10 obviously dealt only with scholarships under the control of the governing body. The resolution of the trustees of 12th April 1882, that students holding bursaries should attend the United College of St Andrews, was not irrevocable, but could be varied in their discretion from time to time. (2) Female students should be admitted. There was nothing in the trust disposition and settlement to indicate that the truster would have been opposed to their admission. *Governors of Spence Bursary Fund*, October 16, 1897, 25 R. 11, 35 S.L.R. 18; *Clark Bursary Fund (Mile-end) Trustees*, February 5, 1903, 5 F. 433, 40 S.L.R. 352.

Argued for the respondents—The benefit should not be extended to the University College of Dundee. To do so would be inconsistent with the terms of the settlement, "either one or other of the colleges of St Andrews," which could only mean one or other of the colleges existing in St Andrews at the time of the trust-disposition and settlement. Further, the minute of 12th April 1882 was final. No subsequently assumed trustees could exercise the *delectus personæ* given alone to Carmichael and Scott, and exercised once for all by them—*Hill's Trustees v. Thomson*, October 30, 1874, 2 R. 68, 12 S.L.R. 20; *Robbie's Judicial Factor v. Macrae*, February 4, 1893, 20 R. 358, 30 S.L.R. 411. In any case, however, Ordinance No. 46 settled the question, it being under clauses 8 and 10 an essential condition of the affiliation that the University College of Dundee should have no share in the funds belonging to the University of St Andrews.

LORD JUSTICE-CLERK—The purpose of the testator as set forth in her settlement was to establish one or more bursaries in either one or other of the colleges of St Andrews as the trustees might determine. That refers plainly to the colleges existing then in St Andrews and in no other place, there being in fact at that time no colleges connected with the University of St Andrews in any other town. It is not necessary to decide whether both or only one of the colleges in St Andrews could share in the bursaries. The only question raised is whether the University College of Dundee which has now been affiliated and brought into corporation with the colleges of St Andrews is entitled to the benefit of this bequest. I am clearly of opinion that it would be inconsistent with the testator's intention that the bursaries should be available for a college which was not one of the colleges in St Andrews at the time when she made her settlement, which is not now situated in St Andrews, and which has only recently been affiliated to the St Andrews University. This is sufficient for the decision of the case.

As to the question of the admission of women, I am of opinion that the bursaries

may be thrown open to them. It is true that the bequest only refers to students which then were eligible, and which of course were males only. But conditions have now altered, and there is nothing in the settlement to indicate, any more than there was in the case of the *Clark Bursary Fund*, 5 F. 433, that she would have been opposed to the admission of women to the benefit of her bounty if they were admissible as students.

LORD KYLLACHY—I am of the same opinion. This is described as a petition to extend the benefits of a certain bequest. It is not suggested that the Court has power to extend the purposes or alter the conditions of the bequest as expressed in the settlement, but, as explained by the counsel for the petitioners, the object of the petition is to obtain a declaration by the Court as to the extent of the trustees' powers under the settlement. What we have to decide therefore is simply whether the trustees have power to extend the benefits of certain bursaries at present confined to students attending the United College at St Andrews to students attending the University College, Dundee. The trustees claim to have this power because the college at Dundee is now one of the colleges composing the University of St Andrews, and though the bursary is limited to students attending "one or other of the colleges of St Andrews," they maintain that that may now be read as including the college at Dundee although it was not one of the colleges of St Andrews at the date of the death of the testatrix. Several answers have been made to this contention. It is said, in the first place, that, as the result of a certain determination made by the trustees in 1882 under a power in the settlement, the benefits of the bursary were confined, and confined finally, not only to students attending one or other of the two colleges at St Andrews, but to students attending the United College at St Andrews. Another answer is that the University College at Dundee forms part of the University of St Andrews only on certain conditions, one of which is that "the bursaries now attached to the colleges and the University of St Andrews shall continue to be tenable only by students studying at St Andrews." But the primary and perhaps best answer is, that on a just construction of the trust settlement the bequest is conceived in favour only of the colleges of St Andrews existing at the date of the testatrix's death, and so does not include the University College of Dundee. I think that view is correct, and as it is sufficient for the decision of the case it is unnecessary to consider whether the other grounds of objection are well founded.

As to the question of the admission of females to the benefits of the bursary, I agree with what has been said and have nothing to add.

LORD STORMONTH DARLING—The testatrix who founded these bursaries died in 1880. At that date there were only two

colleges at St Andrews, and her bequest is expressed to be "for the purpose of establishing one or more bursaries in either one or other of the colleges of St Andrews." In 1897, seventeen years after her death, the University College of Dundee became part of the University of St Andrews, but it did not thereby become one of "the colleges of St Andrews," for, geographically speaking, it remained a college, not at St Andrews but at Dundee. For that reason I am of opinion that it does not fall within the description of the object of the charity as expressed in the trust deed. Further, I entirely concur with the argument for the University Court of St Andrews so far as it is founded on the terms of the agreement between St Andrews and Dundee on which the incorporation proceeded, and when the University Court, representing, as they do, both the contracting parties, tell us that they would regard the extension of the bursaries to Dundee as a breach of that agreement, I do not think we could disregard their views. But I think it enough for the decision of this case to put it as your Lordship has done, that the bursaries are confined to the two colleges existing at the date of the death of the testatrix.

On the other point I agree that females should be admitted to the benefits of the bursaries for the simple reason that there is nothing in the trust deed to indicate the intention of the testatrix to confine them to male students.

LORD KINCAIRNEY—I agree with what your Lordship has said both as to the extension of the bursaries to the University College of Dundee and as to the admission of females to their benefits.

The Court pronounced this interlocutor:—

"Find that the petitioners have authority to admit to the benefits of the Blyth Scholarship Fund female students attending the United College of St Andrews: *Quoad ultra* refuse the prayer of the petition," &c.

Counsel for Petitioners—Wilton. Agent—David R. M'Cann, S.S.C.

Counsel for Respondents—Irvine. Agents—W. & J. Cook, W.S.

Wednesday, June 28.

SECOND DIVISION.

[Sheriff Court of Lothians and Peebles at Linlithgow.

MURPHY v. BLAIR & WHITE.

Process—Appeal—Stated Case—Failure to Observe Regulations of A.S. as to Application for a Stated Case—Failure to Deposit Required Fee—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Sched. II, sec. 14, c—A.S. June 3, 1898, sec. 9 (a).

Section 9 (a) of the Act of Sederunt of 3rd June 1898, regulating procedure under the Workmen's Compensation