HOUSE OF LORDS.

Monday, March 6.

(Before the Lord Chancellor (Halsbury), Lord Macnaghten, Lord James of Hereford, and Lord Robertson.)

MACINTYRE *v.* GRIMOND.

(*Ante*, January 15, 1904, 41 S.L.R. 225, 6 F. 285.)

Succession—Trust—Uncertainty—"Such Charitable or Religious Institutions and Societies as my Trustees may Select."

A testator by his trust-disposition and settlement directed his trustees to divide a portion of the residue of his estate "to and among such charitable or religious institutions and societies as my trustees or the survivor or survivors of them may select, and in such proportion to each or any as they may fix." *Held* (*rev.* judgment of the Second Division) that the bequest was void from uncertainty.

This case is reported *ante ut supra.*

The pursuers and reclaimers appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I do not think it necessary to go through the course of the authorities. I think this question may be decided upon a very simple proposition. In my opinion the testator here has not given a class from which he allowed his trustees to select individually, but he has left his directions so vague that it is in effect giving someone else power to make a will for him instead of making a will for himself, which I conceive to be the objection always entertained where the directions are so extremely vague that you cannot say what it is that the testator meant. In this case the testator has not made any will himself; he has allowed someone else to make a will for him after his death, and that the law will not allow.

I confess I have not been able to entertain much doubt from the commencement of this argument that that is the condition of this will, and I think I am encouraged in the expression of that opinion by finding some variety of opinion among the learned Judges themselves, who nevertheless adhered to the decision of the Lord Ordinary. The Lord Ordinary says it is to be confined to religious societies in the sense of those that are Christian. I do not find that that view is adopted by any of the learned Judges on appeal, and what the particular limit is within which the persons designated, the trustees, are to select I am afraid I have not been able to discover.

It seems to me that the judgment of Lord Moncreiff really disposes of the question quite satisfactorily. I do not wish to add anything to his Lordship's view. It appears to me that he has satisfactorily answered the whole argument which has now been presented by the respondents. In the result I move your Lordships that the judgment appealed from be reversed and a proper interlocutor made for the purpose of giving effect to the judgment prayed by the pursuers.

LORD MACNAGHTEN—I concur.

LORD JAMES OF HEREFORD—I concur for the reasons which have been given by Lord Moncreiff in his judgment.

LORD ROBERTSON—So do I.

Judgment appealed from reversed.

Counsel for Appellants—The Lord Advocate (Scott Dickson)—Wilson, K. C.—Duncan Millar. Agents—Duncan & Black, W.S.—A. & W. Beveridge, Solicitors.

Counsel for Respondents — Campbell, K.C. — Cullen. Agents — W. & J. Cook, W.S.—John Kennedy, W.S.

REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL, WHICH, THOUGH NOT ORIGINATING IN SCOTLAND, DEAL WITH QUESTIONS OF INTEREST IN SCOTS LAW.

PRIVY COUNCIL.

Wednesday, February 3, 1904.

(Before Lord Macnaghten, Lord Lindley, Sir Arthur Wilson, and Sir John Bonser.)

OWNERS OF S.S. "CITY OF LINCOLN" *v.* SMITH.

Ship—Charter-Party—Exceptions in Charter-Party—Personal Negligence of Owner.

No conditions or exceptions in a charter-party will relieve a shipowner from the consequences of personal negligence as distinct from the negligence of his servants or agents, unless such personal negligence is expressly covered and excused by such conditions or exceptions.

Held that, notwithstanding a clause in a charter-party by which the shipowner repudiated any liability for unseaworthiness which might result after the ship went into the hands of the charterers, the shipowner was liable for the results of the ship being rendered unseaworthy by being improperly loaded under his orders.

Charles George Smith brought an action in the Courts of Natal against the owners of the s.s. "City of Lincoln" for damages for the non-delivery of cargo carried by that ship in terms of a charter-party dated 1st December 1899. The defendants denied that they were liable, and founded on clause 32 of the charter-party, by which the owners of the ship repudiated any liability for unseaworthiness which might result after the ship went into the hands of the charterer.

Beaumont, J., after hearing the case with a jury in the Circuit Court, found the defendants liable and gave judgment for £8331. On appeal the Supreme Court of Natal affirmed the judgment, but reduced the damages to £7450.

The defendants appealed.

The facts of the case are set forth in the judgment of their Lordships.

At delivering judgment—

Lord Macnaghten—This is an appeal in the name of the master and owners of the steamship "City of Lincoln" from an order of the Appeal Court in Natal. The order appealed from upholds a verdict and, subject to a variation in the assessment of damages, affirms a judgment obtained in the Durban Circuit Court by the respondent Charles George Smith. The action was brought to enforce a claim for damages for non-delivery of cargo by the "City of Lincoln" in breach of a charter-party dated the 1st December 1899, and expressed to be made in Buenos Ayres between W. Samson & Company "on behalf of the owners" and "T. S. Boadle & Company, charterers." The "City of Lincoln" belonged to W. Samson himself, and this appeal is brought on his behalf. The respondent was represented by T. S. Boadle & Company. The charter provided that the vessel being tight, staunch, and strong, and everyway fitted for the intended voyage, should with all convenient speed, being discharged, proceed as ordered by the charterers or their agents to the under-mentioned places, and receive from them in the port of Rosario a quantity of hay in export bales, thereafter in La Plata a quantity of live stock on deck, which cargo the charterers bound themselves to ship not exceeding what the vessel could reasonably stow and carry over and above her tackle, apparel, provisions, and furniture, and being so loaded should therewith proceed to Port Natal, South Africa, and deliver the cargo on being paid a lump sum freight of £6500. The owners were to appoint the stevedore. The charterers were to have the full reach and burthen of the steamer with the exception of space for 1200 tons of coals for ship's use which were to be carried in steamer's holds and bunkers. The charter and bills of lading contained a series of exceptions and provisions in favour of the owner. Average, if any, was to be payable according to the York-Antwerp Rules of 1890, which negative any claim in respect of cargo carried on deck. In pursuance of this charter-party the "City of Lincoln" commenced loading on the 7th December 1899 at Rosario. There she took on board some 20,000 bales of hay. She then proceeded down the river and entered La Plata on the 16th, where she took in more hay and fodder and received her cargo of live stock—270 bullocks, 100 horses, and 400 sheep. She started on her voyage on the 21st December 1899, leaving Ensenada on the afternoon of that day. She arrived at Port Natal on the 15th January 1900 short