

Bill Fraser?

Note:

From:

File Ref: 19/0/1/316/VS

Murray Scott
Principal Committee Clerk

Mrs A K Mollison
Principal Solicitor
Court Team

Guildry Funds Petition

I enclose herewith a copy of the Certified Copy Interlocutor approving the proposed scheme for the Guildry Funds. The court do not issue an Extract Decree.



AKM
21/01/97

Enc

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COURT OF SESSION, SCOTLAND

CERTIFIED COPY INTERLOCUTOR

In Petition of

ABERDEEN CITY COUNCIL, Town
House, Aberdeen, as Trustees of the Funds
of the Burgesses of Guild of the City of
Aberdeen

for

Approval of a Scheme under and in terms
of Section 9 of the Law Reform
(Miscellaneous Provisions)(Scotland) Act
1990

18th December 1996

Lord Marnoch

The Lord Ordinary having considered the Petition and Report by Morag E.

Armstrong, Advocate, and having heard Counsel for the Petitioner thereon, approves
the proposed scheme appended to the Petition as a scheme for the administration of
the funds held by the Petitioner as trustees of the funds of the Burgess of Guild of the
City of Aberdeen, collectively known as the Guildry Funds, and Decerns.

(sgd) MICHAEL R. BRUCE

EDINBURGH. 7th January 1997

Certified a true copy



Assistant Clerk of Session

ABERDEEN CITY COUNCIL, Town House,
Aberdeen, as Trustees of the Funds of
the Burgesses of Guild of the City of
Aberdeen

for

Approval of a Scheme under and in terms
of Section 9 of the Law Reform
(Miscellaneous Provisions) (Scotland)
Act 1990.

HUMBLY SHEWETH:

1. That the Petitioners are a local authority established by and under the Local Government etc. (Scotland) Act 1994, having their principal offices at Town House, Aberdeen. They are the statutory successors to The City of Aberdeen District Council, as the successors of the Magistrates Council and Office Bearers of the City and Royal Burgh of Aberdeen, and as such the trustees of the Funds of the Burgesses of Guild of the City of Aberdeen. Reference is made to an Extract Decree of Declarator dated 9 March and 22 May 1838 and extracted on 21 June 1838 (the "1838 Extract Decree") and an Extract Decree of Declarator and Reduction dated 7 February 1871 and extracted on 18 April 1871 (the "1871 Extract Decree"). Copies of the 1838 Extract Decree and the 1871 Extract Decree are produced and referred to for their terms which are held as repeated herein brevitatis causa. The trust is a public trust domiciled in Scotland. This Court accordingly has jurisdiction.

2. The funds of the Burgesses of Guild of the City of Aberdeen comprise the funds known as "the Guild Box", "the Additional Fund to the Guild Box" and "the Guild Brethren's Hospital" (known collectively and herein referred to as "the Guildry Funds"). By the 1838 Extract Decree your Lordships found that the Petitioners' predecessors had right to inter alia the funds known as "the Guild Box", "the Additional Fund to the Guild Box" and "the Guild Brethren's Hospital" and that the Petitioners' predecessors and their successors in office had the same jurisdiction and same right to and powers of administration of the said funds and of making all the usual necessary appointments in relation thereto which belonged to and were exercised by their predecessors in office.... In the 1838 Extract Decree it is narrated that the fund kept under the name of "The Guild Brethren's Hospital" had been devoted to the support of decayed Burgesses and their widows and children. The 1838 Extract Decree further narrated the terms of Acts in Council dated 1 March 1609 (referred to in the 1838 Extract Decree as 1 May 1609) and 9 March 1631 which set forth trust purposes of the fund known as "the Guild Brethren's Hospital". Since at least 1609 the said fund has been devoted to the support of decayed Burgesses and their widows and children. By the 1871 Extract Decree your Lordships found, decerned and declared that the Guild Box and the Additional Fund to the Guild Box were held by the Petitioners' predecessors as trustees "for the Burgesses of Guild of Aberdeen and for the widows and families of the Burgesses of Guild of Aberdeen and that the Petitioners' predecessors as Trustees are bound to apply and administer the same and the revenue thereof exclusively for the relief and support of decayed Burgesses of Guild present and future and the widows and families of Burgesses of Guild, such future Burgesses of Guild to be limited to those who make contributions.... in accordance with the regulations relative thereto...". To the knowledge of the Petitioners no other deeds or documents exist constituting the Trust or defining its purposes.
3. The Burgesses of Guild are an unincorporated association of merchants and men and women of business and commerce. The office bearers of the Burgesses of Guild are the Dean of Guild and (a maximum of) six

Assessors. The Dean of Guild is elected by the Burgesses of Guild from their own number at an Annual Meeting of the Burgesses of Guild and his Assessors are appointed by the Petitioners all in accordance with the Regulations of the Burgesses of Guild of Aberdeen. A copy of the said Regulations is produced. As at the date of presentation of this Petition there are between 700 and 800 Burgesses of Guild. The Dean of Guild and his Assessors are named and designed in the Schedule annexed hereto. Admission to the Burgesses of Guild is by application. Applicants require to be proposed and seconded by the Burgesses of Guild. Applications for admission are considered by the Dean of Guild and his Assessors who make recommendations in relation thereto to the Petitioners. Thereafter the Petitioners determine whether or not to admit an applicant to the Burgesses of Guild confirm this procedure as accurate. On admission to the Burgesses of Guild a Burgess pays a fee (currently £26). No other fee is subsequently payable. So far as the Petitioners are aware the Burgesses of Aberdeen were founded at least as early as 1179 when King William the Lion granted Royal Charters in favour of the Burgesses of Aberdeen. Thereafter, in about the 13th century, the Burgesses of Aberdeen divided into two groups, namely the Burgesses of Guild and the Burgesses of Trade, the former being the merchants of the city and the latter the craftsmen. Over the years the Burgesses of Guild became possessed of mercantile and trading rights within the Royal Burgh of Aberdeen and from about 1469 to about 1833 the government of the Burgh of Aberdeen was carried out by the Burgesses of Guild. To this day the Dean of Guild has a special seat, although no voting rights, at meetings of the Aberdeen City Council.

4. As at 3 February 1994 (being the date of the most recent statement of the Guildry Funds) the Guildry Funds amounted to £747,963. A copy of the said statement is produced and referred to for its terms which are held as repeated herein brevitatis causa.
5. From time to time the Petitioners, as trustees of the Guildry Funds, receive applications for aid from the Guildry Funds. Applications, which are means-tested are considered in April and October each year,

and the payment of annuities from the Guildry Funds to successful applicants are made half yearly in May and November of each year. As at the date of presentation of this Petition there are twenty five annuitants. The rate of annuities currently paid is £800 p.a. for Burgesses of Guild or their widows and £750 p.a. for children of Burgesses of Guild. The rate of annuities is reviewed annually. The number of annuitants has fallen considerably for many years. Despite increases in the rates of annuities a considerable surplus of funds has accrued. In recent years less than 50% of the income of the funds has been expended on annuities.

6. The Petitioners respectfully submit that the purposes of the trust provide a use for only part of the property available under the trust, that the class of persons entitled to benefit from the Guildry Funds has ceased to be suitable or appropriate having regard to the spirit of the trust as set forth in the said Acts in Council, the 1838 Extract Decree and the 1871 Extract Decree and that the purposes of the trust have, since the trust was constituted, been adequately provided for by other means. Reference is made to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Sections 9(1)(b), 9(c)(ii) and 9(d)(iii). The Petitioners respectfully submit that the spirit of the trust is the relief of poverty and the promotion of economic activity within the City of Aberdeen. Social and economic changes since 1871 such as improved public health and the provisions of social security benefits, have diminished the need for such provision. Increased provision under the trust could disentitle annuitants from social security benefits otherwise available to them. The Petitioners respectfully submit that it would be appropriate to approve the proposed scheme for the variation of the trust purposes set forth in the appendix hereto as being one which will enable the resources of the trust to be applied to better effect consistently with the spirit of the 1871 Extract Decree having regard to changes in social and economic conditions since the time when the trust was constituted. Reference is made to Section 9(2) of the said Act. The Petitioners have discussed the proposed changes to the purposes of the Trust with the Dean of Guild and his assessors.

7. The Petitioners respectfully submit that the expense of serving this Petition on all the Burgesses of Guild (being persons interested in the subject matter of the Petition within the meaning of Rule of Court 63.11) is unjustified having regard to the expense thereof and the number of such persons. Accordingly the Petitioners seek dispensation with such service and seek service of this Petition on the office bearers of the Burgesses of Guild alone.

8. This Petition is presented under and in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 9 and the relative Rules of Court, in particular Chapters 14 and 63 thereof.

MAY IT THEREFORE please your Lordships to appoint this Petition to be intimated on the Walls and to be advertised once in the Aberdeen Press and Journal newspaper or otherwise as to your Lordships shall seem proper, and to be served upon the persons named and designed in the Schedule annexed hereto in the manner therein specified and to ordain them and any other parties claiming an interest to lodge Answers hereto, if so advised, within twenty one days of such intimation, advertisement and service; and to dispense with service on the Burgesses of Guild of the City of Aberdeen other than the Dean of Guild and his Assessors (all of whom are named and designed in the Schedule annexed hereto); and thereafter upon resuming consideration hereof, with or without Answers and after such enquiry, if any, as to your Lordships shall seem proper, to pronounce an order varying the trust purposes by approving and giving effect to the proposed scheme set forth in the appendix hereto; and for

a warrant for registration in terms of Rule of Court 63.14; and to decern; and for expenses against any person entering opposition to this application; or to do further or otherwise in the premises as to your Lordships shall seem proper.

ACCORDING TO JUSTICE, etc.

Graeme M Henderson

for I W F Ferguson

SCHEDULE

Service of this Petition is sought in common form upon:-

1. The Lord Advocate, Crown Office, 25 Chambers Street, Edinburgh.
2. William Wyllie, 3 Woodend Avenue, Aberdeen, as the Dean of Guild.
3. James Cameron, 109 Kings Gate, Aberdeen, as an Assessor of Guild.
4. Andrew D F Lewis, Glebe House, Durris, Banchory, Kincardineshire, AB31 3BQ, as an Assessor of Guild.
5. William Alexander McKimmie, Dunmore, 4 Ashgrove Road West, Aberdeen, AB2 5DZ, as an Assessor of Guild.
6. Kenneth J Peters, CBE., 47 Abergeldie Road, Aberdeen, AB1 6ED, as an Assessor of Guild.
7. Charles P Skene, OBE., 21 Rubislaw Den North, Aberdeen, AB2 4AL, as an Assessor of Guild.
8. Graeme Joss Wilson, Berrmore, Inchmarlo Road, Banchory, Kincardineshire, AB31 3RR, as an Assessor of Guild.

APPENDIX

Proposed Scheme for the Funds
of the Burgesses of Guild of the City of Aberdeen

1. In this Scheme the following expressions have the following meanings:-

"The trust deed" means the Acts in Council dated 1 March 1609 and 9 March 1631 as narrated in the Extract Decree of Declarator granted by the Lords of Council and Session dated 9 March and 22 May 1838 and extracted on 21 June 1838, and the Extract Decree of Declarator and Reduction granted by the Lords of Council and Session on 7 February 1871 and extracted on 10 April 1871.

"The trustees" means the Aberdeen City Council.

"The trust fund" means the whole property and assets for the time being held by the trustees under and in terms of and for the purposes of the trust deed as it is or as it may be varied under this Scheme.

"The operative date" means the date of the Interlocutor of the Court of Session approving this Scheme.

2. From and after the operative date the trust deed shall have effect subject to the provisions of this Scheme.
3. From and after the operative date the trustees shall hold the trust fund and shall apply the income thereof in such manner and at such times as the trustees in their absolute discretion may decide for the following purposes:-

- (1) Relieving financial hardship among the Burgesses of Guild of Aberdeen present and future and their widows or widowers and families (including without prejudice to the foregoing generality children of deceased Burgesses of Guild at Aberdeen) by the payment of annuities of such amounts as the trustees in their absolute discretion may determine; and

- (2) assisting persons born or habitually resident in the City of Aberdeen and intending to pursue careers that if pursued would qualify them for admission as Burgesses of Guild of Aberdeen to pursue educational or vocational training courses or otherwise to further their proposed careers, and that by means of grants or scholarships of such number and amounts as the trustees in their absolute discretion (but after such consultation with the Dean of Guild and his Assessors as the trustees in their absolute discretion may determine) may determine.

Declaring that in the exercise of their discretion the trustees shall always give priority to purpose (1) above.

4. In the administration and management of the trust fund the trustees shall continue to enjoy so far as applicable the same powers, privileges and immunities as were conferred upon them prior to the operative date and shall have sole power to make regulations for the maintenance and management of the trust fund.

18th December 1996

The foregoing scheme is signed and authenticated relative to interlocutor of this date.

Lord Marnoch

Sgd: Michael S R Bruce

KJM:GUILD DEE

COURT OF SESSION SCOTLAND

CERTIFIED COPY INTERLOCUTOR

In Petition of

**Aberdeen City Council as Trustees of the Funds of The
Burgesses of Guild for the City of Aberdeen**

for

Approval of a Scheme

1997