

was transferred to the trustee for his creditors.

The right to raise an action and do diligence for the recovery of debt is a legal incident of the right to the debt. It arises as a common law right in favour of all creditors against their debtors, and the pursuer in using the arrestment in question is availing himself of that right only. Having an unqualified right to the debt, why shall he be prevented from doing so? Because, it is said, the bankrupt could not have effectually used these arrestments. The answer to that argument—an answer which I humbly think sound—is this, that the objection to an arrestment by the bankrupt is personal—a personal bar which applied to him individually, because of the duty or personal obligation which lay upon him to complete a title in the marriage-contract trustees to the fund by intimation; but although he has failed in his duty, and his failure might give rise to a claim of damages (which is by no means clear in this case, for the bankrupt has lived abroad ever since Mrs Oliphant's death), yet (1) this obligation in no way affects or binds the trustee for his creditors, who is not bound to fulfil personal obligations by the bankrupt, least of all obligations arising out of the bankrupt's holding the office of a trustee, and (2) the duty and obligation which affected and affect the bankrupt were not in any sense inherent qualifications of the right which the trustee in the sequestration acquired under the Bankruptcy Statute. So there is nothing to deprive him of the ordinary remedy of a creditor for recovery of his debt. The right to the debt being absolute, an objection as to the remedy for recovery of it, applying to the bankrupt, arising out of his position as trustee, is in my opinion entirely personal to him, and not an inherent qualification of the right transferred to the trustee.

A personal obligation by a bankrupt under a contract of sale or otherwise to transfer an heritable property, though binding on him, does not affect the trustee on his sequestrated estate, except as giving rise to a claim of damages, because it forms no inherent qualification of his right, and the same observation applies with even greater force in the case of such an obligation as attached to Mr Graeme as a trustee under the marriage-contract. Indeed it must be observed that such an obligation was independent of and altogether unconnected with the bankrupt's right to the debt due to him. It arose out of a question having no connection with the relation of debtor and creditor, and could not therefore, in my opinion affect or limit the power of an assignee for creditors on acquiring right to the debt to sue and use diligence against Mrs Giersberg like any of her other creditors.

On these grounds I am of opinion that the arrestments were effectual, and that the plea of no jurisdiction should be repelled.

LORD ADAM—Mrs Giersberg is said to be indebted to Mr Graeme in the sum sued for, and the trustee has used arrestments for all sums due to Mr Graeme. The sum arrested is a legacy bequeathed to Mrs Giersberg by Mrs Oliphant of Gask. That is the sum out of which payment would be recovered. The trustee as in right of Mr Graeme cannot recover anything which Mrs Oliphant's trustee could not lawfully have paid to Mr Graeme, or which Mr Graeme could not

have recovered from him. The whole case lies in this, that the trustee's title is rested solely and entirely on Mr Graeme and can go no further. Mr Graeme could never have come forward to claim payment out of the fund arrested, and consequently I have no difficulty in agreeing with your Lordship in the chair.

The Court adhered.

Counsel for the Pursuer and Reclaimer—H. Johnston. Agents—Mylne & Campbell, W.S.

Counsel for the Defenders and Respondents—Sir C. Pearson—Low. Agents—Murray & Falconer, W.S.

Friday, June 1.

FIRST DIVISION.

[Lord Fraser, Ordinary.]

BAIRD TRUSTEES v. INLAND REVENUE.

Revenue—Income-Tax Act, 1842 (5 and 6 Vict. cap. 35), sec. 88, Sched. C, Third Rule, sec. 105, Sched. D—Exemption—“Charitable Purposes only.”

Under the provisions of the Income-Tax Act of 1842, sec. 88, Schedule C, Third Rule, and sec. 105, Schedule D, the stock or dividends of any trust established for “charitable purposes only” are entitled to exemption from payment of income-tax.

The terms of a trust-deed, by which funds were bequeathed “for the support of objects and purposes in connection with the Established Church of Scotland, all of a religious character, as after described, and for the aid of institutions having the promotion of such purposes in view,” stated that the object of the truster was to make provision against the existing spiritual destitution, particularly among the poor and working population of Scotland. The income of the trust for the year 1886-87 was applied to a large extent in building churches, partly to the endowment of churches, and partly to the augmentation of stipend, payments for lectures and to the trustees, and miscellaneous expenses. The trustees claimed that the revenue of the trust was exempt from income-tax, upon the ground that the trust was for charitable purposes only.

Held that the term “charitable purpose” should be interpreted in its ordinary and familiar sense, according to which the relief of poverty is signified, and that therefore the income of the trust, not being applicable, and not having been applied to charitable purposes only, was liable for income-tax.

Per the Lord President—“In the construction of taxing Acts the Court must always take it for granted, where these Acts apply to the whole United Kingdom, that the words used by the Legislature are used in their popular and ordinary signification, and are not technical legal terms belonging to one system of jurisprudence which may exist in one part of the United Kingdom and not in another.”

This was an action at the instance of the trustees acting under the deed of trust of the deceased James Baird of Auchmeddan, against the Lord Advocate, as representing the Board of Inland Revenue, under and in terms of the Act 20 and 21 Vict. cap. 44, for repayment of £644, 18s. 8d. paid as income-tax upon the trust investments for the year 1886-87, for which the trustees claimed to be entitled to exemption.

The deed of trust proceeded upon the following narrative:—"I, James Baird of Auchmeddan, residing at Cambusdoon, in the county of Ayr, feeling deeply impressed with the extent to which spiritual destitution prevails among the poor and working population of Scotland, and being satisfied that this proceeds in a great measure from the want of properly organised and endowed territorial work; and considering also that there appears to be a tendency to a departure from the truth, and to an exclusion of religion in the teaching of the young, and that the means available by law are insufficient to provide for the faithful preaching and teaching of the Word of God, and for the exposure and refutation of error, and for the support of church and educational and other purposes of a religious character; and being satisfied that under existing circumstances the evil foresaid cannot properly be met, nor the objects before mentioned attained, without the aid of private benevolence and additional organisations and fresh influences—I have resolved, with a view to these ends, and to promote and further the objects more particularly hereinafter indicated, to provide a fund of £500,000 sterling." The trust declared his wishes to be "that the said funds shall be expended for the support of objects and purposes in connection with the Established Church of Scotland, all of a religious character, as after described, and for the aid of institutions having the promotion of such purposes in view, my grand object being to assist in providing the means of meeting, or at least as far as possible promoting, the mitigation of spiritual destitution among the population of Scotland, through efforts for securing the godly upbringing of the young, the establishing of parochial pastoral work, and the stimulating of ministers and all agencies of the said Church of Scotland to sustained devotedness in the work of carrying the Gospel to the homes and hearts of all. And as such spiritual destitution exists to the greatest extent in populous places, it is my wish that the operation of this trust be directed in the first instance chiefly to such populous places." &c.

The purposes of the trust were—*Primo*, To promote the spreading and preaching of the Gospel in connection with the said Church of Scotland—(1) by assisting to build and endow churches; (2) by assisting to augment the stipends of ministers; (3) by ascertaining "the religious condition of, and spiritual destitution in, parishes or territorial districts." In making grants under this head the trustees were to be guided by the efficiency of churches as shown in their services, their work, and their liberality, and "should also observe from year to year the changes as to spiritual destitution, and they should consider religious improvement and the mitigation of such destitution as elements to guide them in deciding as to giving grants."

Secundo, To produce and disseminate sound literature to promote the principles and purposes, and to aid the institutions indicated. *Tertio*, To assist divinity students to procure their education and prepare for the ministry of the Church of Scotland. *Quarto*, To raise religious teaching to its former position in the schools of Scotland. *Quinto*, To work in connection with the mission, education, endowment, or other schemes of the Church of Scotland.

The income of the trust for 1886-87 amounted to £20,738, 5s. 6d., and from that sum £691, 5s. 6d. was deducted in name of income-tax.

The expenditure for the year was as follows:—

<i>Grants.</i>	
1. Toward Church Building . . .	£14,350
2. Toward Church Endowing . . .	3,292
3. Toward Augmentation of Stipends . . .	690
4. Miscellaneous	200
Baird Lectures	200
Allowance to Baird Trustees	500
	£19,232

The balance of the £20,738, 5s. 6d., after deduction of the tax, was applied in reducing an over-draft which had been created to make payments in former years under heads 1 and 2. In respect that the sums of £690 granted in augmentation of stipends, and £200 for the Baird lectures were paid free of income-tax, and as from the allowance of £500 to the Baird Trustees the income-tax had been deducted before payment, the pursuers did not claim repayment of the income-tax on these three sums amounting to £1390. The tax on these three items, amounting to £46, 6s. 8d., being deducted from the total tax paid, viz., £691, 5s. 4d., left the amount claimed as above stated at £644, 18s. 8d.

The sections of the Income-Tax Act of 1842 founded on were the 105th and the 88th. Section 105 of that Act provides as follows—"Any corporation, fraternity, or society of persons, and any trustee for charitable purposes only, shall be entitled to the same exemption in respect of any yearly interest or other annual payment chargeable under Schedule D of this Act, in so far as the same shall be applied to charitable purposes only, as is hereinbefore granted to such corporation, fraternity, society, and trustee respectively, in respect of any stock or dividends chargeable under Schedule C of this Act, and applied to the like purposes, and such exemption shall be allowed by the commissioners for special purposes on due proof before them; and the amount of the duties which shall have been paid by such corporation, fraternity, society, or trustee, in respect of such interest or yearly payment, either by deduction from the same or otherwise, shall be repaid under the order of the said commissioners for special purposes in the manner hereinbefore provided for the repayment of sums allowed by them in pursuance of any exemption contained in the said Schedule C. The exemption under Schedule C is contained in section 88 of the same Act. The third rule is in these terms—"The stock or dividends of any corporation, fraternity, or society of persons, or of any trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed or trust, or will,

shall be applicable by the said corporation, fraternity, or society, or by any trustee, to charitable purposes only, and in so far as the same shall be applied to charitable purposes only, or the stock or dividends in the names of any trustees applicable solely to the repairs of any cathedral, college, church, or chapel, or any building used solely for the purposes of divine worship, and in so far as the same shall be applied to such purposes, provided the application thereof to such purposes shall be duly proved before the said commissioners for special purposes, by any agent or factor on the behalf of any such corporation, fraternity, or society, or by any of the members or trustees."

Reference was also made in the discussion to the following statutes—The Income-Tax Act, 1842, section 61, No. VI., where allowance is authorised to be made for the duties charged "on the rents and profits of lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes;" and wherein it is further provided that the said allowances are "to be granted on proof before the commissioners for special purposes of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only."

The Educational Endowments (Scotland) Act, 1882 (45 and 46 Vict. cap. 59), sec. 10, which makes provision for the apportionment of mixed endowments—"Where any part of an endowment is an educational endowment within the meaning of this Act, and part of it is applicable or applied to other charitable purposes, the scheme shall be in conformity with the following provisions."

The Customs and Inland Revenue Act, 1885 (48 and 49 Vict. cap. 51), sec. 11, imposes a duty upon property of corporate and unincorporated bodies subject to certain exemptions, one of which is, sub-sec. 3, "property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts."

The pursuers pleaded—Upon a sound construction of the provisions of the Income-Tax Acts, the pursuers are entitled to the exemptions claimed, and decree ought to be pronounced in terms of the conclusions of the summons, with expenses.

The defenders pleaded—On a sound construction of the said trust-deed, and of the provisions of the Income-Tax Acts, the pursuers are not entitled to repayment as claimed.

The Lord Ordinary (FRASER) on the 14th March 1888 pronounced the following interlocutor—"Assolizies the defender from the conclusions of the action, and decerns: Finds the defender entitled to expenses, &c.

"*Opinion.*—By the 105th section of the Income-Tax Act of 1842 (5 and 6 Vict. cap. 35), continued by subsequent Acts, it is enacted that . . . 'Any trustee for charitable purposes only shall be entitled to the same exemption in respect of any yearly interest or other annual payment chargeable under Schedule D of this

Act, in so far as the same shall be applied to charitable purposes only, as is hereinbefore granted to such . . . trustee . . . in respect of any stock or dividends chargeable under Schedule C of this Act and applied to the like purposes.

"Now, Schedule C, thus referred to, enacts that the stock or dividends 'of any trust established for charitable purposes only, or which, according to the rules or regulations, of any deed of trust or will, shall be applicable to charitable purposes only, and in so far as the same shall be applied to charitable purposes only,' shall be exempted from the duty. 'The pursuers of this action aver that they are trustees holding funds for 'charitable purposes only,' and have paid duty upon trust funds in their hands which they have applied to charitable purposes only, viz.—

1. Towards Church Building . . . £14,350
2. Towards Church Endowing . . . 3,292

They now claim a return of the duty paid in regard to these two sums, the same being according to their contention exempted from duty by the statute.

"This raises simply the question, What is the construction to be put upon the words 'charitable purposes only?' According to the pursuers these words have the wide interpretation given to them by the Court of Chancery in England, in interpreting the statute of 43 Elizabeth, cap. 4 (commonly called the Statute of Charitable Uses), and the Statutes of Mortmain. In the case of *Morice v. Bishop of Durham* (9 Vesey 405), Sir William Grant, Master of the Rolls, stated that the word 'charity' in the Court of Chancery in England derived its significance chiefly from this statute of Elizabeth. The title of this statute is 'an Act to redress the misemployment of lands, goods, and stocks of money thereto given to charitable uses,' and the preamble of the Act is in the following terms:—

'Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money, have been heretofore given, limited, appointed, and assigned, as by the Queen's Most Excellent Majesty, and her most noble progenitors, as by sundry other well-disposed persons, some for relief of aged, impotent, and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways, some for education and preferment of orphans, some for or towards relief, stock, or maintenance for houses of correction, some for marriages of poor maids, some for supportation, aid, and help of young tradesman, handicraftmen, and persons decayed, and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants, concerning payments of fifteens, setting out of soldiers, and other taxes; which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money, nevertheless have not been employed according to the charitable intent of the givers and founders thereof, by reason of frauds, breaches of trust, and negligence in those that should pay, deliver, and employ the same: For redress and remedy whereof, be it enacted by authority of this present parliament,' &c. Enactments are then made, authorising the courts to give redress against the frauds,

&c., which called for repression. The Court of Chancery extended very much the list of charitable purposes contained in this preamble. Mr Jarman (*Treatise on Wills*, vol. i. p. 208) says—'Charity is not confined to the objects comprised in this enumeration; it extends to all cases within the spirit and intendment of the statutes.' And he enumerates a vast number of cases (all established by decision of the Court) which have been held to be charitable uses, and of which these are examples—Gifts for the erection of water-works; for the general improvement of a town; for the establishment of a lifeboat; or of a botanical garden; to the trustees, and for the benefit of the British Museum; to the Royal, the Geographical, and Humane Societies; keeping the chimes of a church in repair; for building an organ gallery in a church; founding prizes for essays; for deserving literary men who have been unsuccessful; for the increase and encouragement of good servants; for establishing and upholding an institution for the investigation and cure of diseases of quadrupeds and birds useful to man. The Statute of Mortmain (9 Geo. II. c. 36), which restricted the power of persons to make bequests to 'charitable uses,' adopted the wide definition of these words already recognised in the Court of Chancery in the interpretation of the statute of Elizabeth.

"Now, the question arises whether these decisions have any application to the exemptions given by the Income-Tax Act, which is an Imperial Statute, and the Lord Ordinary thinks that they have not. His opinion is that the words 'charitable purposes' in the 'Income-Tax Act' (intensified by the addition of the word 'only') must be interpreted according to their ordinary and everyday familiar use. Charity in this sense does not mean 'goodwill' or 'benevolence,' or 'the application of funds to public utility,' or for the promotion of learning. It has the restricted sense of 'liberality to the poor,' 'alms,' as given by Dr Johnson. In one sense it may be regarded as charity to devote a sum of money to paying ministers' salaries, and building churches for the spread of religion, even although wealthy agnostics may obtain the benefit of such spiritual instruction. But how is this teaching of religion anywise different from the granting funds in trust for the purpose of teaching science by means of a mechanics' institute, or giving literary instruction by hired lecturers? The income-tax plainly was not intended to be diminished by payments such as these. It is a tax upon everyone having a certain income, and it is only when the clamant calls of poverty and distress render it expedient to relax the incidence of the duty that such relaxation will be given. It was perfectly right to give a wide interpretation to the words 'charitable uses' in the statute of Elizabeth, looking at the object of that statute—to repress frauds that had grown very much in the application of trust funds left for the purposes of public utility. But the very opposite mode of interpretation ought to be given in regard to an exemption contained in a statute imposing a general tax borne by the whole community who are able to bear it.

"The clause in Schedule C itself affords conclusive evidence that the words 'charitable purposes' have not the wide meaning given to the words 'charitable uses' by the Chancery decisions; for,

besides giving the exemption to moneys applied for charitable purposes, the clause goes on to specify that there shall also be exempted from the duty 'the stock or dividends in the names of any trustees, applicable solely to the repairs of any cathedral, college, church, or chapel, or any building used solely for the purpose of divine worship.' Now, such expenditure was not regarded as a charitable purpose, otherwise there would be no necessity for this special clause, and yet such expenditure for repairs upon a church is specially mentioned in the Act of Elizabeth as the application of money to a charitable use. Furthermore, by section 149 it is provided that the trustees of the British Museum shall be allowed the like exemptions 'in respect of any dividends of stock vested in such trustees, or any of them, or in any other for their use, as are granted to charitable institutions by this Act.' Therefore money given to the British Museum was not a 'charitable purpose' falling under the clause in Schedule C, and would not have been exempt from duty but for this special clause; and yet it has been decided by the Court of Chancery that a gift 'to the trustees, and for the benefit of the British Museum,' was a charitable use within the meaning of the English statutes (*British Museum v. White*, 2 S. and St. 595)."

The pursuers reclaimed, and argued—The trust here was one for "charitable purposes only," and they were entitled to the exemption claimed. The Statute of Charitable Uses (42 Eliz. cap. 4) and the Statute of Mortmain (9 Geo. II. cap. 36) were useful for purposes of comparison, though it was not contended that "charitable purposes" in the Income-Tax Act had as wide a scope as "charitable uses" under these Acts. [LORD PRESIDENT—The term in Scotch law applicable to the support of benevolent institutions is "pious uses," not "charitable purposes."] It was to restrict unduly the meaning of charity to confine it absolutely to the relief of physical destitution—*Hamilton v. Minister of Cambuslang*, M. 10,570; *Grant v. Macqueen*, 4 R. 734. To do so would make it necessary to draw distinctions between the feeding and educating of orphans in an orphan institution. The Educational Endowments Act of 1882, sec. 10, and the cases upon the construction of that Act, showed that helping religious education was a charitable purpose within the meaning of the Act—*Ferguson Bequest Fund v. Educational Endowments Commissioners*, 14 R. 624. The apparent distinction between "charitable purposes" and the "repairs of churches" in section 88, Schedule C, Third Rule, of the Income-Tax Act need not be held to apply to the building and endowing of churches. At all events churches might be built for the poor, and so would fall under the first part of that rule. The argument founded on the distinction in the Customs Act between religious, educational, and charitable purposes was not well founded, because in that Act the terms employed were defined and elaborated by instances; in the Income-Tax Act they were general.

The defenders and respondents argued—The building of churches was not a "charitable purpose" any more than the repair of churches. In the ordinary sense charitable was equivalent to eleemosynary. The giving must be in relief of physical want. It was here attempted to confound charitable and public purposes. The ana-

logy of the Statute of Elizabeth and the Statute of Mortmain was misleading. "Charitable uses" had been held under these Acts to include a wide range of benevolent purposes—in *re Douglas-Overt v. Barrow*, 35 Chan. Div. 472; *Beaumont v. Oliveira*, 4 L.R., Chan. 309. In the taxing Acts "charitable" had a much more limited sense—Customs and Inland Revenue Act, 1885, sec. 11, No. 3; Income-Tax Act, 1842, sec. 61, No. 6. Under the Statute of Elizabeth the "repair of churches" was included in, but in the Income-Tax Act distinguished from, "charitable purposes." So also with a gift to the British Museum—Income-Tax Act, sec. 149; *British Museum v. White*, 2 S. & St. 595. There was no decision upon the meaning of the word "charitable" in the case of the *Ferguson Bequest Fund*, nor would the meaning of that word in the Educational Endowments Act be a test of its meaning in the taxing Acts. Nor was it possible to get for the purposes of this case a definition of charity from older cases decided in virtue of the jurisdiction of the Court over charities—*Ross v. Governors of Heriot's Hospital*, 5 D. 589, 5 Sydney Bell's App. 37; *Dundas, Petitioner*, 7 Macph. 675. Charity, in its general sense, implied the relief of physical want. This was an Imperial statute, and its terms must be construed in their catholic and general sense. If the exemption were extended to religious, why not to educational and scientific purposes? Even under the deed the funds were not applicable "only" to relieve the spiritual wants of the poor, and were not to be withdrawn if a poor congregation became wealthy.

At advising—

LORD PRESIDENT—This is an action by the gentlemen known under the name of the trustees of the Baird Trust to recover a sum paid by them as income-tax for the year 1886-87, and amounting in all to £644, 18s. 8d. The ground on which the action is laid is that the pursuers, the Baird Trustees, are entitled to an exemption from income-tax under the clauses of the Income-Tax Act of 1842.

The exempting clause under which the pursuers seek to bring themselves, sec. 105, is thus expressed—"Any trustee for charitable purposes only shall be entitled to the same exemption in respect of any yearly interest or other annual payment chargeable under Schedule D of this Act, in so far as the same shall be applied to charitable purposes only, as is hereinbefore granted to such trustee in respect of any stock or dividends chargeable under Schedule C of this Act, and applied to the like purposes." Schedule C which is thus referred to is appended to section 88 and enacts by the third rule that the stock or dividends of any trust established for charitable purposes only, or which according to the rules or regulations of the trust-deed shall be applicable to "charitable purposes only," and in so far as the same shall be applied to "charitable purposes only," shall be exempted from the duty. The sole question therefore before us is, whether under the provisions of the Baird Trust the dividends which have been subjected to income-tax, and the income of the trust generally, is applicable to charitable purposes only, and has been applied to charitable purposes only? That is the only question before us.

The trustor has expressed pretty distinctly in his deed that his object is to promote religion, and to make provision against the existing spiritual destitution, particularly among the poor and working population of Scotland. And accordingly the income of the year of taxation has been applied to a large extent, as we see in the record, towards the building of churches. The largest sum was applied to that purpose, and another sum of smaller amount has been applied towards the endowment of churches. There are some other subordinate items of expenditure which are of the same character; there is augmentation of stipend, and miscellaneous expenses which are not very clearly defined, payment for Baird lectures, and allowance to the Baird Trustees. Now, are any of these purposes to which the money has been applied—strictly in terms of the deed as we must assume, and it is not disputed—are any of these charitable purposes?

It appears to me that in the construction of taxing Acts the Court must always take it for granted, where these Acts apply to the whole United Kingdom, that the words used by the Legislature are used in their popular and ordinary signification, and are not technical legal terms belonging to one system of jurisprudence which may exist in one part of the United Kingdom and not in another. The occurrence of such technical terms as these in a taxing Act would have the most disturbing and confusing effect, and it would be very difficult indeed to administer such a statute as applicable to the whole United Kingdom. And accordingly we always find in these taxing Acts that the words used are words of ordinary meaning which are understood by everybody, whether in England, Scotland, or Ireland, in the same sense. To endeavour therefore to import into the construction of this statute the meaning attached to the word "charity" in certain classes of cases that have occurred in the Court of Chancery in England would be in direct contradiction to the principle which I have just stated. Of course, if the statute itself affixes a particular meaning or interpretation to a word of ordinary popular use, it must receive the meaning which the statute gives it, but if there is nothing to interpret it in the statutory sense—if there is no interpretation clause, and no context to show that the word is used in other than its ordinary sense—then we are bound in administering the statute to give it that ordinary sense, and no other.

It appears to me that "charity" and "charitable" have one sense, and one only, in ordinary and popular use. Charity is relief of poverty, and a charitable act or a charitable purpose consists in relieving poverty, and whatever goes beyond that is not within the meaning of the word "charity" as it occurs in this statute. The Court or Chancery, as we know, has extended the use of the word "charity" to very different purposes—to purposes of general benevolence and of public utility—but I think it is quite impossible, where we are applying the proper rule of construction to a taxing Act, to give it any such meaning here.

Therefore, without adverting in the first place to the particular clauses of the statute to which the Lord Ordinary has appealed as supporting the construction he has put upon the words, I think *prima facie*, and reading this statute as we

are bound to read every taxing Act, we must read this word "charity" in the sense which I have stated. I am not at all insensible to the strength of the Lord Ordinary's argument on the various clauses of the statute, and particularly on the extension of the exemption to purposes which in a wider sense of the word "charity" would be comprehended within it. I rather desire to rest my judgment upon the plain and broad ground that in an Act of this description applicable to the whole United Kingdom, and for the purpose of levying taxation we are bound to give to such a word as this nothing but its ordinary popular signification. I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD SHAND—I am entirely of the same opinion. The words in the statute to be construed by the judgment of the Court for the purpose of ascertaining what is the extent of the exemption are "any trust established for charitable purposes only;" and I am of opinion, apart from the considerations to which your Lordship has alluded, that in the statute itself we have the means of ascertaining the force and effect of these words. Schedule C, after the provision which your Lordship has read, proceeds to enact, that "the stock or dividends in the names of any trustees applicable solely to the repairs of any cathedral, college, church, or chapel, or any building used solely for the purposes of divine worship," shall be subject to exemption. It appears to me to be clear that if the term "charitable purposes only" had been used in the large sense contended for by the trustees, so as to cover the building of churches, and indeed to include religious purposes generally, any provision of this kind as to the funds provided for the repairs of a church or chapel would be unmeaning and unnecessary. If the statute in an earlier clause has already provided that funds dedicated to religious purposes are to be regarded as given for charitable purposes within the meaning of that term as used in the statute, therefore expenditure on the building of churches and cathedrals being of course directly for a religious purpose, is within the exemption. I cannot understand that it could possibly have been specially provided, as is here done by a later clause, that money spent on the repairs of such churches shall be exempt from the tax. The only inference that I can draw from this special provision that funds laid out in the way of executing repairs on churches or chapels or buildings used solely for the purpose of divine worship are to be so exempt is that the general exemption given under the head of charitable purposes does not cover or include religious purposes, and so does not include expenditure for building churches or augmentations of stipends. And so, without going outside of Schedule C of the statute, I am of opinion that we have a construction put upon the words "for charitable purposes only" which is conclusive against the argument maintained by the reclaimers the Baird Trustees.

But I further agree with your Lordship that the true meaning of the words is as your Lordship has expressed it. It is said that we ought to adopt the more extensive meaning of the words "charitable uses" for which the trustees plead,

because of the wide signification given to them in the English statutes of charitable uses and of mortmain, and in the judgments of the courts in England following on later statutes. But it is very evident that this argument goes a great deal too far for the purpose of the trustees who are seeking this exemption. If we were to give effect to it, the term "charitable uses" employed in these statutes, obviously in an unusually wide sense so as to check the evils which the statutes were designed to remedy, would embrace not merely institutions founded for the relief of the poor, but schools and educational institutions of every kind, and even funds left for the repair of bridges, ports, havens, causeways, sea-banks, highways, and the like. Counsel for the reclaimers could not maintain that the terms used in this statute in a popular modern sense could receive an interpretation so wide. But if the words have not this extended meaning, where is the line to be drawn? It becomes necessary that the Court should draw the line. If the term cannot be carried the length of covering all public uses, then is it to be carried to the extent of including funds dedicated for the promotion of colleges, schools, and educational endowments, and also for the promotion of religion? For that, I think, there is no warrant. I agree with your Lordship in holding that the term "charitable purposes only," used in a modern statute, in the absence of any other terms indicating that a wider meaning is intended, is to be taken in its ordinary sense as referring to funds given for the relief or pecuniary assistance of persons in poverty. I think it relates to funds dedicated to the relief of physical necessity or want—to funds given as alms or as a provision for the relief of persons from physical privations or suffering arising from poverty, and that it goes no farther. It was maintained by the trustees that Mr Baird had in view assistance to the poor in reference to their religious necessities, for the evil which he avows it his purpose to meet is "spiritual destitution." Even if the funds had been given entirely to overcome this evil in the case of the very poorest, the exemption claimed would not be within the provision of the statute. But further, a perusal of the deed shows that while the religious benefit of the poor was one of the objects he meant to promote, the purpose he had in view really was to promote the extension of his own religious views among the rich as well as the poor—that he considered there was spiritual destitution to be met with in the one class as well as in the other—and that it was his purpose to remedy this by inducing all to agree in the particular creed which he has set forth at length in his deed.

The only other observation which I have to make is this, that I think there is much force in the argument presented to us on the terms used in the Statute 48 and 49 Vict. c. 51, sec. 11—the Customs and Inland Revenue Act—which renders liable to duty the income of incorporations at certain fixed periods. That statute provides an exemption in favour of property which, or the income of profits thereof, shall be legally appropriated and applied "for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine

arts." We find therefore that in a modern statute passed for the purpose of taxation, where an exemption is intended to be given with reference to funds which are used in connection with any religious persuasion, that is specially provided in the statute, and that this provision is separate and distinct from what follows, viz:—"any charitable purpose." There seems to me to be in that statute a clear distinction drawn between the two—the words are "any purpose connected with any religious persuasion or for any charitable purpose." The latter words alone would not have been sufficient to cover and include the former, and I draw the same distinction in the statute with which we are dealing, and hold that "any charitable purpose" will not cover "any religious purpose," as the trustees here contend that it does.

On these grounds, and concurring in all that your Lordship has said, I think that the judgment of the Lord Ordinary should be adhered to.

LORD ADAM—I concur in all your Lordships have said. It appears to me to be quite impossible to extend the term "charitable purposes" used in this Act so as to cover religious purposes, which is the nature of the expenditure here in question, and I have nothing to add.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Graham Murray—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defender and Respondent—Lord Adv. Macdonald—Sol. Gen. Robertson—A. J. Young. Agent—The Solicitor of Inland Revenue.

Tuesday, June 5.

FIRST DIVISION.

THE PARTICK, HILLHEAD, AND MARYHILL GAS COMPANY AND ANOTHER.

Public Company—Preference Shares—Unpaid Dividends—Arrears of Dividend—Interest.

Preference shares in a joint stock company were issued under powers contained in the articles of association, which provided that at a general meeting of the company the capital might be increased by the creation of new shares, whether ordinary or preferential or special, on such terms and conditions as the meeting might determine. The special resolution creating the preference shares contained the following:—"These shares to be entitled to a perpetual dividend of five pounds ten shillings per centum per annum."

Held that if the profits in any year were insufficient to pay in full the dividends due to the preference shareholders, the arrears must be paid out of the profits of subsequent years, but that no interest was due upon the arrears."

The Partick, Hillhead, and Maryhill Gas Company (Limited) was incorporated under the Companies Acts 1862 and 1867 on the 2d May 1871. The original capital of the company was

£50,000, but by resolution passed on 29th October 1872 the ordinary share capital was increased to £100,000, which was fully paid up.

Under article 6 of the company's articles of association power was given "on the recommendation of the directors and with the sanction of at least three-fifths of the votes of the shareholders, voting in person or by proxy at any general meeting of the company," to increase the capital of the company, "by the creation of new shares, whether ordinary or preferential or special, and on such terms and conditions as the meeting determine." In or about the month of August 1873 the directors resolved to recommend an issue of preferential shares, and at a special general meeting of the company, held on 22d August 1873, the following special resolution (afterwards duly confirmed) was passed:—"That, in terms of the recommendation of the directors, the capital of the company be, and is hereby increased by the sum of £30,000, to be issued in 6000 preference shares of £5 each, these shares to be entitled to a preferential dividend of five pounds ten shillings per centum per annum."

These preference shares were taken up, and from the time of their issue till June 1885 the dividend of 5½ per cent. was duly paid.

In 1886, however, the directors, in consequence of an investigation, discovered that there was a discrepancy between the quantity and value of the coal actually in hand and that shewn by the measurement and monthly records submitted by the manager, and at the balance of 30th June 1886 a sum of £10,789, 15s. 3d. was debited to revenue on account of deficiency of stocks. At the same time there was debited to revenue a sum of £939, 0s. 6d. of debts of previous years which had been treated as good, but were then ascertained to be irrecoverable. After charging these two sums there was a sum of £8667, 17s. 7d. at the debit of revenue, or in other words, as shown in the company's balance-sheet, the assets were short of the capital and liabilities by that amount, and no dividend was paid either to the ordinary or preference shareholders. Had these two sums not fallen to be debited there would have been a balance at the credit of the revenue account of £3060, 18s. 2d., which would have been more than sufficient to pay the dividend on the preference shares.

At the balance on 30th June 1887 there was a balance of profit on the year's working of £7725, 11s. 3½d., which was applied to the extent of £1000 as an addition to the depreciation fund, and to the extent of the balance in reduction of the balance of £8667, 17s. 7d. at the debit of the previous year, carrying forward a debit balance of £1942, 6s. 3½d. That is to say, as shown in the company's balance-sheet, the assets were short of the capital and liabilities by the last mentioned amount, and no dividends were paid either to the preference or ordinary shareholders.

The directors anticipated that at the close of the current year at 30th June 1888 there would be a sufficient sum at the credit of revenue account to pay off the above debit balance of £1942, 6s. 3½d., to pay the dividend for the current year on the preference shares, and possibly to pay a portion of the arrears of dividend on these shares, assuming these arrears to be due.

In these circumstances questions arose between