

## COURT OF SESSION.

Saturday, May 27.

## FIRST DIVISION.

TRUSTEES AND GOVERNORS OF  
JOHN WATT'S HOSPITAL, PETI-  
TIONERS.*Trust—Charity—Nobile Officium.*

A trustor who died in 1829 directed that the residue of his estate should be applied in founding an hospital in Leith for the relief and maintenance of deserving and destitute men and women belonging to the district, of the age of 55 years and upwards. The hospital was opened in 1862. In 1892 the trustees petitioned the Court to adjust a scheme whereby, in place of maintaining the beneficiaries in the hospital, they might devote the income of the trust-estate to the payment of annuities for boarding them out in Leith or its neighbourhood, and to enable the trustees to carry out this scheme, to authorise them to sell the hospital and other heritable property belonging to the trust. The petitioners expressed the belief that the benefits of the trust were being enjoyed by a lower class than the testator intended, and that if a scheme were sanctioned on the lines suggested by them they would be able to extend the benefits of the charity to a much larger number than the hospital could accommodate of the class which the testator designed chiefly to benefit. The Court remitted to a reporter, who reported generally in favour of the suggested change of system, and thereafter the Court authorised a scheme, under which the petitioners were empowered to sell the hospital and other heritable property of the trust, and apply the proceeds of the trust-estate in pensioning the beneficiaries, each of the existing beneficiaries to be allowed an annuity of £25, and each beneficiary in the future an annuity of not more than £25 or less than £10. The scheme further provided that the trustees should maintain a medical officer on the staff of the charity to attend pensioners resident in Leith.

John Watt died on the 29th of September 1829, leaving a trust-disposition and settlement dated in 1827, wherein he conveyed his whole estate to the trustees therein named. After payment of debts and certain provisions and legacies the trustor directed the trustees to set apart the residue of his estate until it should accumulate to an amount of not less than £12,000, and when that sum had been obtained to apply it in founding an hospital in or close to Leith, to be called John Watt's Hospital, "for the relief and maintenance of men and women in destitute circumstances, of

55 years and upwards." The persons who were to be entitled to admission to the hospital were declared to be (first) persons of the name of Watt; (second) natives of the parish of South Leith of whatever name; (third) persons of whatever name who had constantly resided in that parish for ten years prior to admission; (fourth) failing applications for admission, then persons in the classes already mentioned, and in the same order of priority, and then men and women of the like age of 55 or upwards, who should be natives, or have constantly resided in the city of Edinburgh, or some other part of Midlothian. The trustor declared it to be his intention in founding said hospital to relieve the poor and needy and deserving; and directed his trustees to require applicants to produce certificates of character signed by the minister and two elders of their parish, and on no account to admit any but "decent, godly, and well-behaved men and women." After the hospital had been opened for the reception of inmates for five years the administration of its affairs and whole funds was to devolve on the Senior Magistrate of Leith and certain other *ex officio* trustees, in conjunction with the trustees named by the trustor, and any that might have been assumed by them prior to said date.

In conformity with the testator's directions a hospital was built. It was opened in 1862.

In December 1892 the trustees and governors presented a petition to the Court, in which they made the following statements:—"The petitioners, after long experience of the administration of the hospital, have come to the conclusion that it is impossible to continue the present hospital, and at the same time to give effect to the true and substantial purpose of the testator. They are advised and believe that the testator's intention was to benefit a class different from and higher in character than the ordinary inmates of the modern poorhouse, which did not exist at the date of the testator's death. . . . The class of beneficiaries contemplated by the testator are numerous in Leith and neighbourhood, but comparatively few of them make application for admission to the hospital, which they regard as little better than the poorhouse. The result is that the petitioners have had to admit to the benefits of the hospital persons of a lower class than that chiefly contemplated by the testator. In these circumstances the petitioners are strongly and unanimously of opinion that in place of maintaining the beneficiaries in the hospital it is preferable to devote the income of the trust-estate to the payment of annuities for boarding them out with friends or respectable people in Leith or its neighbourhood. With that view the petitioners desire either to sell the hospital property and invest the price on proper securities, or to feu out the same; and it is thought that the free income of the trust would in that event rise to about £1000, and this being distributed among aged poor and deserving men and women

in annuities not exceeding £15, the petitioners believe they would thereby be enabled to carry out the substantial purpose of the testator, and also to extend the benefits of the charity to a much larger number than the hospital can accommodate of the class whom the testator designed chiefly to benefit, provision being made for the maintenance of the existing inmates."

The petitioners craved the Court to adjust and approve a scheme for the future administration of the trust on the lines suggested by them; and with the view of carrying the same into effect, to authorise them to sell the hospital and other heritable property belonging to the trust.

On 19th January the Court remitted to Mr Charles C. Maconochie, advocate, to inquire into the facts set forth in the petition, to consider the scheme proposed, and to report.

In his report Mr Maconochie, while expressing himself in favour of the view that a change should be made in the system on which the charity was administered, in the direction proposed by the petitioners, for the reasons stated by them in the petition, suggested that the proposed scheme of out-door relief should be modified in the following particulars—(1) that the actual amount of the annuity in each case should be left in the discretion of the trustees, but that a minimum annuity of £10, and a maximum of £25, should be fixed; (2) that the present inmates of the hospital should be given the maximum allowance from the time they were required to leave the hospital; and (3) that the trustees should continue to have a medical attendant on the staff of the charity, whose duty it would be, when called upon, to attend on the beneficiaries who were resident in the Leith district, and provide them with medicine at the expense of the charity. On the last point the reporter added that he had "reason to believe, from inquiries made from medical men, that the services of an efficient doctor could be procured for a yearly fee of about £25." The reporter further stated that when he visited the hospital "the inmates asked that they should be allowed to have a meeting with me. They then expressed an unanimous wish that I should inform your Lordships that they are very anxious that the charity should continue to be carried on on the present system, and that they were of opinion that with an annuity of £15 it would be impossible for them to procure an equivalent for the comforts enjoyed in the hospital, of which they spoke in the highest terms."

The petitioners argued—That on the report a case had been made out for the interference of the Court, and submitted that a remit should be made to the reporter to prepare a scheme in terms of his report. They referred to the following authorities *Clephane, &c. v. Magistrates of Edinburgh*, February 26, 1869, 7 Macph. (H. of L.) 7, per Lord Westbury, p. 15; *Carnegie Park Orphanage*, March 12, 1892, 19 R. 605, per Lord M'Laren, p. 608; *University of Aberdeen v. Irvine*, July 20, 1869, 7 Macph. 1087,

per Lord President, 1092; *Biscoe v. Jackson*, 1887, L.R., 35 Ch. Div. 460.

On 16th March the Court appointed Mr Maconochie to prepare a scheme as suggested in his report.

Mr Maconochie thereafter submitted a scheme, of which the following were the most important provisions—“(2) The governors shall have power in place of maintaining in the present or in any future hospital, men and women who are now beneficiaries under John Watt's Trust and resident in the hospital, to allow to each of such men and women a pension or allowance of £25 per annum, such pension or allowance to become payable from and after the date at which the said beneficiaries shall be required by the governors to leave the present hospital. (3) The governors shall have power, in place of maintaining in the present or in any other hospital, men and women who may hereafter become beneficiaries under John Watt's Trust, to allow to each of such beneficiaries a pension or allowance of not less than £10 and not exceeding £25 per annum. (4) The said pensions or allowances, whether they be payable to existing or to future beneficiaries, shall be payable in advance, at such periods as the governors may from time to time determine, and it shall be in the power of the governors to pay such pensions or allowances either direct to the pensioner or to the person with whom the pensioner resides, or to such other person as the governors may think fit, to be applied for the pensioner's behoof. (5) In the event of the circumstances of any pensioner so altering that the governors shall deem it no longer necessary to continue to pay his or her pension in whole or in part, as the case may be, they shall have power to discontinue the said pension or to reduce the amount thereof as they shall see fit, provided always that in the event of any pension being so reduced, it shall not be reduced below the sum of £10 per annum; and in the event of any pensioner misbehaving (of which the governors shall be the sole judges), the governors shall have power to remove his or her name from the list of pensioners. (6) The said pension or allowance shall in all cases be in full of all benefits of every description in use to be received by beneficiaries under the trust, with the exception that pensioners resident within the burgh of Leith shall be entitled to medical relief from the charity, as hereinafter provided. (7) The governors shall appoint and maintain on the staff of the charity a medical officer, whose duty it shall be, when called on by a pensioner resident within the burgh of Leith, to attend such pensioner, and to supply him him or her, at the expense of the charity, with such medicine as, in the opinion of the said medical officer, he or she may require. It shall further be his duty to report to the governors from time to time, as they may require, as to the state of health and wellbeing of those pensioners upon whom he has been called to attend, and once a year to visit each pensioner resident within the said burgh, and to

report to the governors upon his or her state of health and wellbeing. (8) The governors shall once a year obtain reliable information as to the health and wellbeing of such pensioners as are not resident within the district visited, as hereinbefore provided, by the medical officer on the staff of the charity. . . . (10) The governors shall have power to sell the building known as 'John Watt's Hospital,' Leith, with the site thereof, and ground attached thereto, and all rights connected therewith, or to feu out the said property, and further, to sell the heritable subjects belonging to the trust-estate in Thomson's Place, Leith."

The Court approved of the scheme submitted by Mr Maconochie.

Counsel for the Petitioners—W. C. Smith.  
Agents—Snody & Asher, S.S.C.

Tuesday, May 30.

## FIRST DIVISION.

[Court of Exchequer.

### MAUGHAN (SURVEYOR OF TAXES) v. FREE CHURCH OF SCOTLAND.

*Revenue — Income - Tax — Allowances — Charitable Purposes — Income-Tax Act 1842 (5 and 6 Vict. c. 35), Schedule (A), sec. 61, No. 6.*

By 5 and 6 Vict. c. 35, sec. 61, No. 6, allowances in respect of the income-tax imposed by Schedule (A) are to be granted, *inter alia*, by the Commissioners for Special Purposes of the Income-tax on the rents and profits of lands, tenements, hereditaments, or heritages, vested in trustees for charitable purposes, so far as the same are proved to said Commissioners to have been applied to charitable purposes.

The Free Church Assembly Hall was held by certain trustees in trust for the Free Church. It was the place of meeting for the General Assembly and Commissioners of Assembly of said Church, and was also sometimes used for other purposes, principally of a religious or semi-religious nature, and for charitable and temperance causes. No rents or profits were made from the hall.

*Held* that the trustees of the Free Church, who had been assessed under the general rule of Schedule (A) on the annual value of the hall, were not entitled to the allowance granted by the clause quoted above, in respect that said allowance only applied where rents or profits received by trustees were applied by them to charitable purposes.

At a meeting of the Commissioners of Income-tax for the district of the city of Edinburgh, held on 24th January 1893, Mr Robert R. Simpson, W.S., Depute-Clerk of the Assembly of the Free Church of Scot-

land, acting on behalf of the general trustees of the Free Church of Scotland, appealed against an assessment made under the general rule of Schedule A (5 and 6 Vict. chap. 35), sec. 60, on the Free Church Assembly Hall, Mound Place, Edinburgh, on an annual value of £238, duty at 6d. per pound, £5, 19s.

The Commissioners allowed the appeal and relieved the assessment, and the Surveyor having expressed his dissatisfaction with this decision the present case was stated for the opinion of the Court of Exchequer.

The following statements were made in the case:—"The Free Church Assembly Hall is held by the general trustees of the Free Church of Scotland in trust for the Free Church. The hall was built expressly for the place of meeting of the Free Church General Assembly, held annually in the month of May, when it sits for about ten days, and also for meetings of Commissions of Assembly, who sit about three times a year. It is, however, occasionally used for other purposes, principally of a religious or semi-religious nature, and for charitable and temperance causes. On one occasion, many years ago, the use of it was given, in special circumstances, for a meeting at which Mr Gladstone spoke, and a course of lectures under the Health Society has also been delivered in it. On such occasions no charge is made for admission to the public, but a charge is made on the party engaging the hall of from £2, 2s. to £3, 3s. per day, which does not exceed the actual expenses of lighting, heating, and cleaning the hall on such occasions."

By 5 and 6 Vict. c. 35, sec. 61, No. 6 (Schedule A), allowances are to be granted by the Income-tax Commissioners "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: The said last-mentioned allowance is 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 said last-mentioned allowances to be claimed and proved by any steward, agent, or factor acting for such school, hospital, or almshouse, or other trust for charitable purposes, or by any trustee of the same, by affidavit to be taken before any commissioner for executing the Act in the district where such person shall reside, stating the amount of the duties chargeable, and the application thereof, and to be carried into effect by the Commissioners for Special Purposes, and according to the powers vested in such Commissioners, without vacating, altering, or impeaching the assessments on or in respect of such properties, which assessments shall be in force and levied notwithstanding such allowances."

Argued for the Surveyor of Taxes—The allowance here claimed under head 4 of Rule 6 of Schedule A, assuming the claim