of the question is to discover further errors and omissions in the account, which are not in this petition sought to be excused. Counsel for the respondent Sutherland contended that he was entitled to put such questions to witness for the purpose of showing that in his return he wilfully, or with gross carelessness, understated the amount of his personal expenses," and the Lord Ordinary sustained the objection. I think that was a bad objection. The petitioner in an application of this kind cannot, by limiting the application to certain omissions, limit the inquiry as to his conduct to these particulars, because the Act of Parliament says that what he has to make out in regard to the omissions sought to be excused is, that they were occasioned by inadvertence—which is the allegation here—and not by any want of good faith. Suppose it should appear that the petitioner, over and above the omissions which he seeks to be excused from, has, wholesale, omitted other items which were proper to the heads of his account, would that not bear on the question whether a particular omission was to be excused, whether particular omissions were inadvertent or not, and also on the question whether the omissions were in good faith. In like manner, even one additional omission might, from its character or circumstances, be strong evidence of want of good faith; and in questions of conduct it is impossible to shut out evidence of the *animus* which actuates proceedings of which, by accident, only part are directly under consideration. It seems to me, therefore, that the Lord Ordinary has mistaken the scope of the proof, which it is part of the petitioner's case to offer to the Court—proof, namely, of inadvertence and of the presence of good faith. To my thinking, the question objected to is highly relevant to the inquiry, and the same observation applies to the second question which was objected to, the objection being again sustained.

The same reasoning leads me to a like conclusion in regard to the evidence tendered of expense having been incurred for hiring, and not included in the return.

With reference to what Mr Ure said as to the distinction to be drawn between the cross-examination of the party to the cause on a particular topic, and substantive evidence being led on the same subject, there is no doubt that such a distinction is recognised. But it does not occur when the subject-matter of the inquiry is relevant to the issue, and, as I have already said, evidence of this character seems to me to be completely relevant on the question of inadvertence and good faith. The cases to which Mr Ure refers are cases where the party to the cause may be cross-examined on matters not bearing on the issue, with a view to testing his character and credibility. But here the vital point is, that the evidence was relevant to the cause. I am therefore of opinion that these objections ought not to be sustained, and that the case should go back to the Lord Ordinary.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court pronounced this interlocutor:—

"Find that the objections set forth on page 17 of the petitioner's proof, and on page 27 of the respondent's proof, ought not to have been sustained by the Lord Ordinary: Therefore recal the interlocutor reclaimed against; repel the said objections, and decern: Find the reclaimer entitled to expenses since the date of said interlocutor . . .: Remit to the Lord Ordinary to proceed as shall be just."

Counsel for the Petitioner—Ure—Cooper. Agents—M'Naught & M'Queen, S.S.C.

Counsel for the Respondent—Jameson—Crole. Agents—A. & S. F. Sutherland, S.S.C.

Thursday February 4.

FIRST DIVISION.

BAIN (SURVEYOR OF TAXES) *v.* TRUSTEES OF FREE CHURCH OF SCOTLAND.

Revenue—Income Tax—Exemption—Free Church College—Income Tax Act 1842, *sec.* 61, *Sched. A, No.* VI.

Held that a theological college used for the purpose of qualifying for the ministry students who had passed through a university course, was not a "public school" in the sense of section 61, Sched. A, No. VI., of the Income Tax, Act 1842, and consequently was not within the exemption conferred by that section.

At a meeting of the Commissioners of Income Tax held in Edinburgh on 5th May 1896, the trustees of the Free Church of Scotland appealed against an assessment under Schedule A of the Property and Income Tax Acts on £665, duty £22, 3s. 4d., made on them for the year ended 5th April 1896 as occupiers of the Free Church or New College Buildings, Edinburgh, and claimed exemption from the tax on the ground "that the said College being a public school is exempt under the Act.

The Commissioners sustained the appeal on this ground, and the Surveyor of Taxes obtained a case.

The case stated—"(3) The College referred to is what is known in Scotland as a divinity hall—and it is in this sense that the word 'college' is used in this case — and is intended for the training of candidates for the ministry after they have completed their undergraduate course at one or other of the national universities, although other students who may be desirous to make themselves proficient in any of the subjects taught therein may be and are admitted. The ordinary theological curriculum consists of four years' regular attendance, and

the grouping of the classes for the said College is as follows:—First year—Divinity, Junior Hebrew, Natural Science; Second year — Divinity, Senior Hebrew, Junior Exegetics; Third year — Divinity, Senior Exegetics, Junior Church History; Fourth year — Divinity, Senior Church History. Lectures in natural science and in elocution are also delivered every session, and although attendance at these lectures forms no part of the curriculum, regular students are recommended to attend them. (4) The number of students who attended the said College in session 1895-96 was 131. Of these 86 were regular or ordinary students of the Free Church of Scotland, who before admission had produced all the certificates set forth in pages 9 and 10 of the College calendar of the Free Church of Scotland for session 1895-96, and who intended to follow the regular four years' course of study. The remaining 45, of whom 10 were Scotch, 4 English, 9 from Ireland, and 22 from the United States, Canada, and other places abroad, were irregular students, who had either not passed the necessary examinations or who were not provided with the certificates required from regular or ordinary students or aspirants to the ministry of the Free Church, who did not intend to follow the regular four years' course of study. On a separate page of the enrolment book there is also kept a register of students who are not provided with all the statutory certificates; such students may be allowed to take part in all the ordinary work of the classes they attend with the exception of the discourses required by the laws of the Church, but the course of study followed at the New College, and the examinations which follow, are regulated to meet the requirements of the ordinary Free Church students, and not those of the irregular students. The irregular students have the right to compete for certain of the bursaries and scholarships attached to the College, provided they have attended one year at any of the universities. There is also one bursary open to irregular students. All students who enter the College are understood to profess their faith in Christ and their obedience to Him. (5) Candidates for admission to the College as ordinary or regular students must have completed that attendance at a university which is required for graduation. Before admission, graduates in arts, science, law, or medicine, are examined by the Free Church of Scotland Examination Board in Scripture and in Hebrew, Greek, and Latin, except in so far as these languages have been included in the examination for their degrees. Non-graduates are examined in Scripture knowledge, Hebrew, classics, philosophy, and mathematics, except in so far as they have already passed degree examinations in any of the subjects. . . . (9) The matriculation fee for ordinary students of theology is 10s. a-year, and the common fee £4,10s. annually. Students from other countries and churches, counting their attendance as part of their curriculum, pay the same fees. Other English-speaking students pay in all £2, 10s. annually; students speaking foreign languages pay the matriculation fee only. The revenue of the College from students' fees for tuition and for use of library does not nearly cover the working expenses, the deficiency being made up by the income of endowments and from church-door collections."

"It was contended by the appellants that the New College was a public school within the meaning of section 61, No. VI., of 5 and 6 Vict. cap. 35, and that it was accordingly exempt from duty, and in support of this contention they cited the following cases — *Hall* v. *Derby Sanitary Authority*, *November* 12, 1885, 16 Q. B.D. 163, 54 L.T.R. 175; *Blake* v. *Mayor, etc., of London*, *May* 23, 1887, L.R., 19 Q.B.D. 79. In support of the assessment Mr Alexander Bain, surveyor of taxes for the district in which the College buildings are situated, contended that the College was not a public school within the meaning of Schedule A, No. VI., of section 61 of the Income Tax Act 1842. In support of this contention, he argued—(1) That Schedule A, No. VI., did not apply; that the Free Church College or Divinity Hall, Edinburgh, was not 'a college or hall in any of the universities of the United Kingdom'; and that the term 'public school' in the sense of Schedule A, No. VI., was not synonymous with, and did not include, 'college or hall,' because 'college or hall' is distinguished from 'public school,' and separately dealt with in the clause. (2) That nowhere in the College calendar, which the College Committee publish annually for the information of the public, is the College designated a 'school' or a 'public school'; but that, on the contrary, the Edinburgh, Aberdeen, and Glasgow Free Church Colleges are, in the opening paragraph of the calendar, defined to be 'all theological colleges, or, according to the designation long prevalent in Scotland, "divinity halls," intended for the training of candidates for the ministry, after the students have completed their undergraduate course at one or other of the national universities.' (3) That even assuming the College could be called a 'school,' neither its purpose nor its regulations with regard to the admission of students entitled it to be called a *public* school in the sense of Schedule A, No. VI."

Schedule A, No. VI, of section 61 of the Income Tax Act 1842 (5 and 6 Vict. cap. 35) exempts from duty "any hospital, public school, or almshouse, in respect of the public buildings and offices belonging to such hospital, public school, or almshouse."

At advising—

LORD PRESIDENT — The question is whether in the sense of this statute the Free Church College is a "public school."

What then, in the first place, is the institution now in question? It is a theological college. The training offered is theological study, primarily at least as qualifying for the ministry of the Free Church. It is therefore an institution for professional training. But an establishment of that kind is necessarily one for

young men and not for boys; and the period of life is shown by the fact that the students must either be graduates of a university, or at least must have passed through a university course of arts, or have some similar equipment in literature and philosophy.

Well now, in ordinary language I do not think that anyone would call a theological college a public school. Of course the word "school" in a literary, and still more in a rhetorical sense, is applied somewhat widely. But the phrase we have to construe is "public school," and we have to look to the context of this statute. Now, the Act, in the immediately preceding paragraph, has occasion to consider universities and colleges for the purpose of conferring an exemption on certain colleges. But if the argument of the respondents be sound, this was entirely superfluous, for on their construction of the words "public school," the colleges so exempted are at least as much "public schools" as is the Free Church College. Accordingly, the statute contains within itself clear evidence that the words "public school" are used with no greater latitude than is accorded to them by popular use.

I am for reversing the determination of the Commissioners and sustaining the assessment.

Lord Adam—I quite agree. I think although it may not be easy to define what a public school is, it may not be difficult to say what is not a public school. In this particular case it appears to me from the narrative given of the nature of the appellant's institution, that it is neither more nor less than an institution primarily for the purpose of educating or preparing persons for entering the Free Church as ministers. In my opinion that is not a public school in any sense, and I agree with your Lordship that there can be no doubt that this is not a public school in the sense of the Act.

Lord M'Laren—This case raises only a question of construction of the exemptions in the taxing statute, and I agree with your Lordships that the Free Church College does not come within the exemptions relating to public schools. I do so on the ground that in the consideration of taxing statutes, the true canon of construction is to take the primary sense of the words used, and that shade of meaning which is in ordinary use, avoiding all secondary meanings. The principle so applied is one which generally operates in favour of the taxpayer, because it avoids bringing in persons who might fall within the taxing words in a remote or analogical sense. But of course the principle must be applied consistently to clauses of exemption as well as to taxing clauses; and in this case confining the words "public school" to the meaning with which we are familiar in ordinary use, it leads to the failure of the plea of exemption which has been set forth.

Lord Kinnear concurred.

The Court reversed the determination of the Commissioners and sustained the assessment.

Counsel for the Surveyor of Taxes—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Trustees of the Free Church — Macphail. Agents — Cowan & Dalmahoy, W.S.

Thursday, January 28.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

ASSETS COMPANY, LIMITED *v.* SHIRRES' TRUSTEES.

Appeal to House of Lords—Leave to Appeal—Interlocutory Judgment—Title to Sue—City of Glasgow Bank Liquidation Act 1882 (45 *and* 46 *Vict. cap. clii.*)

The Court having sustained the title of the Assets Company, Limited, to sue a reduction of a compromise entered into between the liquidators of the City of Glasgow Bank and a contributory, the defenders moved for leave to appeal to the House of Lords on the ground that if such appeal were sustained there would be no necessity for further inquiry.

The Court *refused* leave.

Fraud—Reduction—Restitutio in integrum—Mora.

The liquidators of the City of Glasgow Bank in 1879 compromised a claim against a contributory of the bank with the sanction of the Court, upon a declaration by him that he had disclosed his whole assets, and on condition that he surrendered any rights as a contributory of the bank. The right to the assets of the bank was subsequently transferred to the Assets Company, Limited, by the City of Glasgow Bank Liquidation Act 1882, and in 1895 they raised an action against the executors of the deceased shareholder, concluding for reduction of the compromise on the ground of fraudulent concealment of assets, and for payment of the balance of calls, or otherwise for damages. The defenders pleaded (1) that the action was incompetent in respect that it was now impossible to give *restitutio in integrum* to the rights of solvent contributories as regards any possible assets of the bank; and (2) that the defenders were barred by *mora* from insisting in the action. The Court (*aff.* the judgment of the Lord Ordinary) *allowed* a proof before answer.

Process — Proof — Diligence for Recovery of Documents—Scope of Diligence in Case of Fraud.

The liquidators of a bank compromised claims for calls due by a contributory. In a reduction of the com-