The action is defended on variou grounds, which are considered by the Lord Ordinary in his opinion, and I shall deal with them shortly in the same order. First, it is contended that Neil became solvent before sequestration was awarded, so that the condition of notour bankruptcy was extinguished. If this were according to the fact, the conditions necessary to give the trustee a title to sue would not exist when he came into possession of Neil's estate. But I agree with the Lord Ordinary that on the facts as stated by the defenders and confirmed by documentary evidence, the pursuer was never in a condition to meet his engagements during the period that intervened between his notour bankruptcy and the award of sequestration in 1893. In 1891, when a judicial factor was appointed on the estate of Neil & Reid in which Neil was a partner, the proceeds of the estate was only sufficient to pay the firm's creditors eight shillings in the pound. Neil offered to pay the balance of twelve shillings in the pound in five instalments at intervals of three months, but was only able to pay the first and second and one-half of the third instalment. In such a case I am of opinion that the acceptance of a composition arrangement is no proof of the recovery of solvency but the reverse. The debtor stands confessed that he is unable to pay his debts which are due. If he performs his contract he will recover his state of solvency, but until the last instalment is paid he continues in the condition of a man who is unable to meet his current obligations, and who only retains the possession of his estates through the indulgence of his creditors. It may be that, if creditors were offered such security for the instalments as should induce them to give an immediate discharge, the debtor would be rehabilitated. But in the present case this was not done, and on the failure to meet the third instalment sequestration was taken out in respect of the unpaid debts.

The second point is that when the composition agreement was made the Bank discharged certain inhibitions to enable Neil to sell his heritable property for the benefit of his creditors. It is said that this amounts to a transaction between the unsecured creditors and the Bank, in which the creditors should be taken to have recognised the validity of the bond as a condition of taking benefit through the withdrawal of the inhibitions.

The answer is, that that was in fact no transaction between the Bank and the unsecured creditors, but only between the Bank and their debtor. The Bank only withdrew the inhibitions on receiving further security from Neil for his overdraft, and there is no evidence that the assent of other creditors was either asked or given.

Thirdly, the defenders contend that the payment to them of the price of the security-subjects was a cash payment, and therefore not affected by the Act of 1696. Now, if the Bank had never held a security over the heritable subjects, and if Neil had merely sold an unburdened subject and paid the price to the Bank in reduction of his debt balance, I should agree that the payment was unexceptionable. But the facts are very different. In 1892 Neil entered into a contract of sale of the security subjects. This he was quite entitled to do without consulting the Bank; but then he could only sell under burden of the heritable security. To enable the sale to be carried through, the Bank agreed to discharge the security in exchange for the price. I agree with the Lord Ordinary that this was simply a mode of realising the security. There is no substantial distinction between the case of a sale by the Bank under the power of the bond and a sale by the debtor in the bond for the benefit of the Bank. In either case the discharge of the heritable security is the equivalent or consideration for the price of the subjects, and I cannot for a moment suppose that the Bank would have discharged its security without this equivalent, leaving it to the debtor to pay or not to pay as might suit his convenience.

The fourth point was not argued, and as to the fifth point it is sufficient to say that under the 11th section of the Bankruptcy Act 1856 the pursuer is entitled to set aside preferences for the benefit of the whole body of creditors, and it is not necessary to his title to sue that he should represent prior creditors.

I agree with the conclusions of the Lord Ordinary on all the points of the case, and am for adhering to the interlocutor under review.

LORD ADAM, LORD KINNEAR, and the LORD PRESIDENT concurred.

The Court adhered.

Counsel for the Pursuer—Sol.-Gen. Dickson, Q.C.—Younger. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders—Balfour, Q.C. —Salvesen—Macphail. Agents—Mackenzie & Kermack, W.S.

---

*Thursday, December* 1.

## FIRST DIVISION

(With LORD KYLLACHY).

[Lord Pearson, Ordinary.

## COUNTY COUNCIL OF RENFREW *v.* BINNIE AND OTHERS (TRUSTEES OF ORPHAN HOMES OF SCOTLAND).

*Assessment — Exemption — Sunday and Ragged Schools (Exemption from Rating) Act* 1869 (32 *and* 33 *Vict. cap.* 40).

Under the Sunday and Ragged Schools (Exemption from Rating) Act 1869, the rating authority, while it has power to exempt ragged schools from assessment, is not bound to grant such exemption.

*Held* (by Lord Pearson) that the institution known as "The Orphan Homes of Scotland" is not a ragged school in the sense of section 2 of the Act.

The Sunday and Ragged Schools (Exemption from Rating) Act 1869 (32 and 33 Vict. cap. 40) enacts—"Whereas for many years and until lately buildings used as Sunday and ragged schools for gratuitous education enjoyed an exemption from poor and other rates, and it is expedient that they should be exempted from such liability: (1) From and after the 30th day of September 1860 every authority having power to impose or levy any rate upon the occupier of any building or part of a building used exclusively as a Sunday school or ragged school, may exempt such building or part of a building from any rate for any purpose whatever which such authority has power to impose or levy; Provided that nothing in this Act contained shall prejudice or affect the right of exemption from rating of Sunday or infant schools, or for the charitable education of the poor in any churches, district churches, chapels, meeting-houses or other premises, by virtue of an Act passed in the third and fourth years of the reign of King William the Fourth, cap. 30: (2) A ragged school shall mean any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, and without any pecuniary benefit being derived thereupon, except to the teacher or teachers employed."

By the Exemption Act of 1833 (3 and 4 William IV. cap. 30) it is provided (sec. 1)—"No person shall be rated or shall be liable to be rated . . . for or in respect of any churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship"; (sec. 2) "That no person shall be liable to any such rate because the said churches . . . or any part thereof may be used for Sunday or infant schools or for the charitable education of the poor."

An action was raised by the County Council of Renfrewshire against Robert Binnie and others, the trustees of the Orphan Homes of Scotland for Destitute Children, and for the Consumptive Homes of Scotland. The action concluded for payment of the consolidated rates due to the county for three years in respect of certain subjects in Kilmalcolm parish, known as the "Orphan Homes of Scotland for Destitute Children." The defenders had appealed to the Rates Appeal Committee of the County Council with reference to the rates for 1894-5, who discharged the occupier rates and refused the appeal *quoad* proprietor rates. Against this decision the defenders appealed to the County Council, who reimposed the whole rates, and thereafter raised the present action.

The defenders maintained that the subjects in question were exempt from all local assessments by virtue of the Sunday and Ragged Schools (Exemption from Rating) Act 1869, being within the definition of a ragged school contained in that Act.

A proof was allowed by the Lord Ordinary (PEARSON), the purport of which appears from his Lordship's opinion.

On 19th March 1898 the Lord Ordinary pronounced decree against the defenders in terms of the conclusions of the summons.

*Opinion*—"In this action the County Council claim payment of consolidated rates for three years in respect of certain subjects situated in the parish of Kilmalcolm. As to part of the subjects assessed, the liability to pay rates is not now disputed. But the remainder of the subjects, being those owned and occupied by the defenders as trustees for The Orphan Homes of Scotland for Destitute Children, are said to be exempt from all local assessments by virtue of the Sunday and Ragged Schools (Exemption from Rating) Act 1869 (32 and 33 Vict. cap. 40).

"Two main questions were discussed before me—(1) Whether the charitable institution known as The Orphan Homes of Scotland is within the definition of a 'ragged school' contained in that Act? and (2) If it is so, whether the exemption is absolute, or is in the discretion of the assessing body?

"The institution is situated within its own grounds, which extend to about 40 acres. There are about fifty-two separate buildings. These include about forty dwelling-houses for the children, described as 'cottage or villa homes,' as well as gate-house, superintendent's house, church, two hospital homes for non-infectious cases, an isolation hospital, a 'ship on land,' a school-house with class-rooms, a reception room, laundry, bakery, stores, stable, byre, conservatory, joiner's shop, and poultry farm and cottage. The church is admittedly exempt under another Statute (37 and 38 Vict. cap. 20). But with this exception it is maintained that the aggregate of the items I have enumerated, including the land used for tillage and for flower garden, is a ragged school within the meaning of the Act of 1869. The defenders' claim is for total exemption of the composite subject.

"The inmates at present number 1034 children and young persons, and the land and buildings have cost about £200,000. But, as was natural, the institution has developed from small beginnings. It began in 1870 in an old workshop in Renfrew Lane, Glasgow, where about thirty children were lodged, fed, educated, and trained to handicrafts. When that became too small, a move was made to Cessnock House in Govan Road, which stood in three acres of land, and accommodated about 100 children. This being taken for the formation of Cessnock Dock, the trustees acquired a farm of forty acres at Bridge of Weir, and began building operations in 1877. At the same time the system of housing the children was changed. The barrack system was abandoned, and the system known as cottage homes was adopted. Each home holds about thirty children, who form a separate household.

Each boys' home is governed by a married couple (without children of their own), who are addressed as 'father' and 'mother,' while each girls' home is under a 'mother' only. The inmates of each house are separate from the others as regards family worship, meals, household work, and evening preparation of lessons. In other matters they meet together and intermingle more or less, as in chapel, school, and workshop.

"The ages of the children at entrance vary very much. The greatest number are about nine or ten at admission. The normal age limit of intrants is between six and fourteen, but in exceptional cases no age limit for intrants is recognised either way. Nor is there any fixed age for leaving. In some cases inmates stay on at the homes, and obtain positions of trust in the establishment at a modest remuneration.

"The school education is conducted on the lines of the Education Code; and as soon as a child is, in the judgment of the headmaster and the superintendent, qualified to pass the fifth standard, that child is put to industrial work. The heads of the various houses are selected as being skilled in certain handicrafts, and the children who have passed through the school are set to learn the trade for which they are best fitted.

"I have said that this was originally a Glasgow institution. Its original connection with Glasgow is carefully kept up. The Glasgow premises are known as the City Orphan Homes; and they include a children's night refuge, a boys' home, and a home for young women. This central institution is the source from which all the inmates at Bridge of Weir are drawn. No case is taken on at Bridge of Weir which has not passed through the City Homes. At the City Homes are kept the books which form the register, and contain the history of the Bridge of Weir children; and also the books of account, which for some years past have been amalgamated, although at one time they used to be separate. Thus the Orphan Homes at Bridge of Weir are truly a branch, though a very large and important branch, of the Glasgow institution. Their location in Renfrewshire is accidental in this sense, that the conditions might have been created in any adjoining county, as Lanark or Dumbarton, and have served the ends of the charity equally well.

"I may notice one other feature of the charity — the emigration scheme. It is found that the percentage of failures among those children who emigrate to Canada is much smaller than among those who remain in this country. Accordingly parties of children are shipped from time to time, under proper superintendence, to join a large establishment in Canada connected with the same charity. These parties go from Bridge of Weir to the ship, and they are sometimes joined at Bridge of Weir by others who have passed through the City Homes and are desirous of emigrating at once. These cases are sent down to the Orphan Homes for a day or two before the party starts, but they do not become inmates in the ordinary sense. I advert to this emigration scheme because it explains some difficulties which were supposed to arise on the evidence. I do not mean to suggest that if the institution is otherwise a ragged school it is any the less so because of the ultimate destination of the children.

"I turn now to the statutory definition of ragged school, which is— 'A "ragged school" shall mean any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, without any pecuniary benefit being derived therefrom except to the teacher or teachers employed.'

"The subject of exemption must therefore (1) be a school, and (2) be used for certain specified purposes, and in a certain way. Now, I may say at once that this institution, in my opinion, includes all these purposes—that is to say, it affords gratuitous education to children and young persons of the poorest classes, and furthers that object by holding classes and meetings, and I assume that the boys' allowance for pocket-money, and the valuable products of their industrial work which are consumed on the premises, do not run counter to the requirement that no pecuniary benefit shall accrue except to the teachers. One may go further, and say it is possible that the composite subject known as The Orphan Homes of Scotland contains within its borders both a ragged school and a Sunday school within the meaning of the Act. But to say that that composite subject, viewed as a whole, is either the one or the other, or both, is, I think, to strain the language of the definition clause.

"The definition contains three prominent words which show the kind of thing that was in view—namely, school, education, and teacher. The exemption was to follow upon teaching by teachers in a place adapted for teaching. And in this connection the enacting words in section 1 may be referred to. The rating authority may exempt from any rate 'any building or part of a building used exclusively as a ragged school.' Allowing any latitude of construction, it is difficult for the defenders to bring their 40 acres, with all that they have put upon them, within that description. This more limited view of the scope of the Act is, I think, confirmed by the inclusion of Sunday schools in the exemption. The idea is that a building may be exempted from rates if it is used only for giving religious or secular education gratuitously to the children of a locality, provided that in the case of secular education the children be of the poorest class.

"It might have aided in the construction of the statute to ascertain the character and scope of the institutions known as ragged schools in Scotland and England (for it is a British Act) at the time the Act was passed. The only light thrown upon this by the proof is the account given of Dr Guthrie's Ragged Schools. His first school was begun in 1847. It was purely a day school, but as the hours were from six

A.M. to six P.M. it was of course necessary to feed the children. The ragged children remained ragged until the school had been ten years in existence, when the system of clothing them was begun. Then about the year 1869 (the year the Exemption Act was passed) the school was certified and the site was changed to Ramsay Lane. It was then that a dormitory was added, according to the evidence of Mr Henderson, though I was informed from the bar that it was believed that boys had begun to be lodged some years before. But it was not until about 1875 that the dormitories were extended so as to provide for all the pupils. This instance, therefore, regarded as in 1869, rather accords with the more limited interpretation of the Act which I have suggested.

"The defenders' argument seems to me first to assign an unduly extended meaning to the word 'education' as used in this Act, and then, having done so, to use the larger meaning so obtained to widen the scope of the word 'school.' I do not say that according to classical English use 'education' may not properly designate all the things pointed at by the defenders, which included practically every item of a child's life at the Orphan Homes. But I cannot so interpret the word as used in the Act.

"Moreover, I think the view I have indicated is in accordance with the justice of the case, a consideration not to be left out of account unless the statutory words are perfectly distinct. *Prima facie* to exempt one subject from rating is to increase the burden of the remaining ratepayers of the area. One expects, therefore, to find some correspondence between the two things, some direct or indirect benefit to the rating area flowing from the existence or use of the subjects which are to be exempt. Now I have not heard any good reason why the county ratepayers of Renfrewshire should be compelled to make a special contribution towards the Orphan Homes of Scotland. It is true that 80 out of the 1034 inmates are Renfrewshire children by origin. But that is as much as to say that the remainder are not. And even of the 80, it is pointed out that only about half come from the county rating area. This difficulty is anticipated on the record, and is met in a somewhat singular way (Stat. 3). It is averred that 'the local authorities, county councils, and parish councils are and have been relieved of expenditure upon the children.' It is said that the children were or would speedily have become chargeable to the rates as paupers. Parish rates are not in question under this summons, though they may be involved in the decision, but it seems pertinent to ask what parishes are referred to as having been relieved? Again, it is averred that by providing 'a school and school teachers and education for these children' they have saved the parish of Kilmalcolm from the cost of erecting and maintaining two Board schools. Then as to the benefit conferred on the county, they say that, having brought into Renfrewshire (quite lawfully) 1000 children 'drawn from the lowest classes of the community, and peculiarly susceptible to epidemic disease,' they have provided an infectious or isolation hospital for them, and also a special water supply. But as matter of fairness that is the least they could do. I should have thought that upon these items their account with the county was just squared, and that if they were to obtain exemption on these grounds they would be getting credit for the hospital and the water supply twice over. Then they take a wider range, and urge that the children having been in many cases rescued from careers of poverty and crime, 'great saving is effected to the community of expenditure in prison establishments and in many other ways.' All this is doubtless quite true, and I would not be understood as saying anything in disparagement of an institution which is doing noble work. But it is very far indeed from justifying the levy of a special and involuntary contribution from each ratepayer of this county.

"The view I have expressed leads to decree as concluded for, and supersedes the necessity of deciding the other question submitted, namely, whether the exemption, if it applies, is absolute, or is within the discretion of the assessing body? I may say, however, that, as at present advised, I am not prepared to accede to the defenders' argument that 'may' means 'shall' in the Act of 1869. The strength of the argument lies in the preamble of the Act, which explicitly declares the exemption to be expedient. But this is outweighed by other considerations. I think that the principles expounded by the House of Lords in the case of *Julius* v. *The Bishop of Oxford* (1880, 5 App. Cas. 214) tell strongly in favour of the pursuers' argument on this part of the case; and it is worthy of notice that instances of exempting statutes with peremptory words lie near at hand, and afford a marked contrast to this Act of 1869. The church, for example, which is part of this institution, is exempt under a Statute 37 and 38 Vict. cap. 20, which extended to all local rates an exemption from poor rates which had been conferred on churches and chapels in Scotland by the Act 28 and 29 Vict. cap. 62. The last-mentioned Act was passed in consequence of a doubt whether the previous Act of 3 and 4 Will. IV. cap. 30, extended to Scotland. Now, all these Acts are expressed in peremptory language, conferring an absolute right to exemption; and it is significant that section 1 of the Act of 1869, which is now in question, while using merely permissive words in its enacting clause, expressly refers to and saves the 'right of exemption' of certain schools conferred by the Act of William IV. Indeed, it is not easy to see why that saving was inserted, unless the exemption conferred by the Act of 1869 was to be discretionary; for it is only if an application for exemption under the Act of 1869 should be refused that any doubt could arise whether that might not operate to withdraw the exemption conferred by the earlier statute.

The defenders reclaimed, and argued—(1) The exemption, assuming that it applied to the present subjects, was an absolute one and not within the discretion of the assessing body, and accordingly the fact that the County Council had refused to admit it did not affect the case. The words used in the preamble of the Act which declared the exemption to be expedient, showed clearly the intention was that the exemption should be granted independently of the views of the assessing body. The Act had been passed in consequence of the decision in *Mersey Docks Trustees* v. *Cameron*, 1865, 11 Clarke's H. of L. 443, which upset the former practice, which had been to exempt, and it was meant to give the right *de jure* which had formerly existed *de facto*. It was true that in the case of *Julius* v. *The Bishop of Oxford*, 1880, 5 App. Ca. 214, the words "shall be lawful" were held not to be imperative, but it would be more natural to leave some discretion in the hands of a high judicial body or ecclesiastical authority than in the hands of a local body such as the County Council; and, moreover, the words of the preamble here fulfilled the two conditions laid down by Lord Cairns in *Julius* at pp. 223-5, as those under which "may" was read as being equivalent to "shall." As regards the saving clause founded upon by the respondents, the Act was not dealing with churches, as the Act 3 and 4 William IV. cap. 30, but with buildings getting a new exemption, and accordingly it was natural to insert the proviso that "This Act gives certain privileges, but there is no intention of interfering with the old Act."

Argued for respondents—(1) Since the reclaimers could not table any exemption granted in terms of the statute, they were bound to show it was the duty of the respondents to grant such exemption. The law on the point was clearly laid down in *Julius*, and even if the reclaimers' reading of the preamble were correct, they could not bring their argument up to the level of the criterion which was given in that case. No such great weight could be attached to the preamble as the reclaimers maintained, and it must fall far beneath that attached to the proviso. If the exemption conferred by the Act were compulsory, why was it necessary to save in the proviso the absolute right of exemption given by the other Act? If the preamble failed to square with the proviso, then the former must go to the wall; but it was possible to reconcile the two without any great strain of language by reading the intention of the Legislature as being—"This *de facto* exemption was put an end to by the judgment in the *Mersey Docks* case, but we will give power to exempt." It was important to notice that there was no right to exemption pre-existing *de jure*, and accordingly the preamble could not give it if the conferring words of the section did not.

At advising—

Lord President — This is a petitory action brought by the County Council of Renfrewshire to recover county rates which have been assessed by them on the lands and heritages of the defenders, and the defence is rested on the provisions of the Act 32 and 33 Vict. c. 40. That statute purports to authorise the assessing bodies to exempt ragged schools. *De facto* this assessing body, to wit, the pursuers, have not exempted the defenders' school, but, on the contrary, are insisting for payment of the rates assessed. Unless therefore the statute made it obligatory on rating authorities to exempt all ragged schools, the defence fails, even assuming the school in question to be a ragged school. In my opinion there is no such obligation.

If regard be had to the enacting words alone, it is past dispute that what is expressed is a power to exempt, and not an obligation to exempt. It is true that if it shall appear that the power thus conferred is given in support of, or is available to support a right arising *aliunde*, there would be an obligation on the rating authorities to exercise the power in support of the right. Where, then, is the defenders' right? They rest their case solely on the preamble of the statute itself. Now, the preamble certainly asserts the expediency of exempting ragged schools, and the generality of the expression is unrestrained. The reader of the statute might well expect that, following on this preamble, a right to exemption would be created, and had the enacting words been ambiguous this might have determined the choice of alternative readings. But the language of the enacting clause is not ambiguous, but perfectly definite, and its terms express a discretionary power and not an obligation. Nor do I think it possible to hold that, assuming the enacting words to import a power only, the preamble of itself creates a right to exemption, making it incumbent on the assessing bodies in all cases to exercise the power. This would be to assign to the preamble an independent effect which does not belong to a recital of the moving causes of the enactments which follow.

The deliberation and full intention with which the enacting words are chosen is strikingly illustrated by the fact that the Legislature uses them in full view of the imperative words which are appropriate to create a right to exemption. For the statutory right to exemption contained in the Act of William IV., which is mentioned and saved in the enacting section itself, is expressed in these unambiguous words—"No person or persons shall be rated or shall be liable to be rated or to pay any church or poor rate or cesses for or in respect of any church." If it had been intended to confer on ragged schools a right to exemption, and not merely to enable the authorities to exempt in cases in which they should see fit, it is impossible to see why those plain and peremptory terms should not have been again used. It appears difficult also, as the Lord Ordinary remarks, to account for the reservation of

the right to exemption conferred by the Act of Will. IV. if the new enactment had also conferred a right. Nor can it be overlooked that rights of exemption in the statutes relating to imperial taxes are conferred by enactments which do not purport to authorise exemption but directly confer it.

I may add, first, that while, as already said, the preamble does give rise to an expectation which is scarcely fulfilled by the enactment, yet it may perhaps be fairly regarded as stating a general expediency, and as not inconsistent with the modification of the rule by the consideration of particular cases; and second, that it is quite consistent with legislative practice to confer on assessing bodies a power to exempt to be exercised in their discretion. Instances of this are to be found in the 42nd section of the Poor Law (Scotland) Act 1845, and in the 4th sub-section of the 62nd section of the Local Government (Scotland) Act 1889, and in these cases the discretion is to be exercised about the exemption of individuals, which is a still more delicate matter than the exemption of institutions. In the latter case it seems quite appropriate that the relation which the institution bears to the particular locality in regard to benefits conferred on that locality, as distinguished from others, should be considered in a question of local rates, and there are other considerations as to the nature and scale of the institution, which might legitimately influence the exercise of a discretionary power to exempt.

I hold that the defence is irrelevant, inasmuch as, even assuming this to be a ragged school, it has not been exempted by the authority authorised to confer exemption. This being so, the question whether it would be lawful to exempt this institution does not arise, and I therefore express no opinion upon it.

I am for adhering.

Lord Adam—There are two questions in this case — (1) Whether the institution known as "The Orphan Homes of Scotland" is a ragged school in the sense of the Act 32 and 33 Vict. c. 40, and (2), if so, Whether the rating authority is bound to exempt the building or buildings occupied by such institution from all rates, or whether it is merely in the discretion of the rating authority to do so or not as it shall think right. If it is a matter of discretion merely, then it is unnecessary to decide whether the institution is a ragged school or not, because the rating authority in the exercise of its discretion has not exempted it.

Section 1 of the Act enacts that every authority having power to impose or levy any rate upon the occupier of any building used exclusively as a Sunday school or ragged school may exempt such building, or part of a building, from any rate for any purpose whatever which such authority has power to impose or levy.

Now, it appears to me that the words here used, "may exempt," are, in their ordinary meaning and use, merely enabling words, and confer a power to exempt on the rating authority, but no duty. The words used are not "shall exempt," which is the meaning proposed to be put upon them by the defenders.

But although that is so, as I understand the law as expounded in the case of *Julius* referred to by the Lord Ordinary, it is open to the defenders to show, either from the context or from other provisions of the exempting statute, or from the circumstances of the case, that although the form is permissive, yet nevertheless the Legislature intended the exercise of the power of exemption by the rating authority to be compulsory.

We were accordingly referred to the preamble of the Act which declares that it is expedient that such institution should be exempted from rating, which certainly suggests that the Legislature intended that all such institutions, and not some only, should be exempted.

But if that were so, we should naturally have expected that the enacting clauses would have given effect to that intention in clear and ambiguous language, which, as the Lord Ordinary points out, it very well knows how to use when it so intends. No reason occurs to me why permissive and not compulsory language should have been used in this case if it was intended that the intention should be absolute.

It will further be observed that section 1 contains a proviso that nothing in the Act contained should prejudice the right of exemption from rating of Sunday or infant schools (and so on) by virtue of 3 and 4 Will. IV. c. 30. It is obvious that if the Act were intended to confer an absolute exemption of ragged and Sunday schools, this proviso would be entirely unmeaning and unnecessary, because in that case it would only confer a further and more complete exemption. It is only if an application for exemption under the Act were refused that any doubt would arise.

On the whole matter I think the interlocutor of the Lord Ordinary should be adhered to.

Lord Kyllachy concurred.

Lord M'Laren and Lord Kinnear were absent.

The Court adhered.

Counsel for the Pursuers—Guthrie—A. C. Kennedy. Agent—F. J. Martin, W.S.

Counsel for the Defenders—Lord Adv. Graham Murray, Q.C.—M'Clure. Agents—Dove, Lockhart & Smart, S.S.C.